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CONTENTS IN THIS ISSUE

Pages 3225 to 3255 include **ARC 7103C** to **ARC 7109C**

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

| | |
|--|------|
| Regulatory Analysis, Definitions, ch 1 | 1627 |
| Regulatory Analysis, Organization and administration, ch 2 | 1632 |
| Regulatory Analysis, Certification of CPAs, ch 3 | 1636 |
| Regulatory Analysis, Licensure of LPAs, ch 4 | 1642 |
| Regulatory Analysis, Licensure status and renewal of certificates and licenses, ch 5 | 1647 |
| Regulatory Analysis, Attest and compilation services, ch 6 | 1654 |
| Regulatory Analysis, Certified public accounting firms, ch 7 | 1659 |
| Regulatory Analysis, Licensed public accounting firms, ch 8 | 1664 |
| Regulatory Analysis, Reciprocity and substantial equivalency, ch 9 | 1668 |
| Regulatory Analysis, Continuing education, ch 10 | 1673 |
| Regulatory Analysis, Peer review, ch 11 | 1683 |
| Regulatory Analysis, Fees, ch 12 | 1686 |
| Regulatory Analysis, Rules of professional ethics and conduct, ch 13 | 1690 |
| Regulatory Analysis, Disciplinary authority and grounds for discipline, ch 14 | 1695 |
| Regulatory Analysis, Disciplinary investigations, ch 15 | 1702 |
| Regulatory Analysis, Disciplinary proceedings, ch 16 | 1708 |

| | |
|---|------|
| Regulatory Analysis, Enforcement proceedings against nonlicensees, ch 17 | 1713 |
| Regulatory Analysis, Licensees' duty to report, ch 18 | 1717 |
| Regulatory Analysis, Practice privilege for out-of-state certified public accountants, ch 20 | 1720 |
| Regulatory Analysis, Practice privilege for out-of-state certified public accountant firms, ch 21 | 1726 |

AGENDA

| | |
|---|------|
| Administrative rules review committee | 1610 |
|---|------|

ALL AGENCIES

| | |
|--|------|
| Agency identification numbers | 1624 |
| Citation of administrative rules | 1608 |
| Schedule for rulemaking | 1609 |

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

| | |
|---|------|
| Regulatory Analysis, Description of organization, ch 1 | 1732 |
| Regulatory Analysis, Licensure, ch 2 | 1736 |
| Regulatory Analysis, Continuing education, ch 3 | 1746 |
| Regulatory Analysis, Rules of conduct, ch 4 | 1752 |
| Regulatory Analysis, Exceptions, ch 5 | 1758 |
| Regulatory Analysis, Disciplinary action against licensees, ch 6 | 1766 |
| Regulatory Analysis, Disciplinary action—unlicensed practice, ch 7 | 1771 |

ECONOMIC DEVELOPMENT**AUTHORITY[261]**

- Notice, Tax credit programs, 43.3,
47.3(3), 48.4(1), 116.3(6), 116.6
ARC 7106C 3225
Notice, Renewable chemical production
tax credit, ch 81 **ARC 7105C** 3227

ENGINEERING AND LAND SURVEYING**EXAMINING BOARD[193C]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Regulatory Analysis, Administration, ch 1 1775
Regulatory Analysis, Fees and charges, ch 2 1783
Regulatory Analysis, Application and
renewal process, ch 3 1787
Regulatory Analysis, Engineering
licensure, ch 4 1793
Regulatory Analysis, Land surveying
licensure, ch 5 1803
Regulatory Analysis, Seal and certificate
of responsibility, ch 6 1810
Regulatory Analysis, Professional
development, ch 7 1815
Regulatory Analysis, Professional
conduct of licensees, ch 8 1822
Regulatory Analysis, Complaints,
investigations and disciplinary action,
ch 9 1829
Regulatory Analysis, Peer review, ch 10 1837
Regulatory Analysis, Minimum standards
for property surveys, ch 11 1841
Regulatory Analysis, Minimum standards
for U.S. public land survey corner
certificates, ch 12 1845
Regulatory Analysis, Civil penalties for
unlicensed practice, ch 13 1849

EXECUTIVE COUNCIL[361]

- Regulatory Analysis, Group insurance
for state employees; deferred
compensation program; health
maintenance organizations, adopt ch 1;
rescind chs 5, 6 1853
Regulatory Analysis, Contingent
fund—disaster aid; disaster
contingency fund, adopt ch 2;
rescind ch 7 1856
Regulatory Analysis, Inheritance tax
payments, adopt ch 3; rescind ch 11 1860
Regulatory Analysis, Disbursement of
money from civil reparations trust fund,
adopt ch 4; rescind ch 12 1864

HUMAN SERVICES DEPARTMENT[441]

- Regulatory Analysis, Uniform rules on
agency procedure, chs 1, 3 to 6, 9, 16 1868
Regulatory Analysis, Payment of small
claims, ch 8 1904
Regulatory Analysis, Collection of debt,
ch 11 1907
Regulatory Analysis, Program evaluation,
ch 13 1913
Regulatory Analysis, Fiscal oversight of
the early childhood Iowa initiative, ch 122 1918
Regulatory Analysis, Adoption services,
ch 200 1922
Regulatory Analysis, Subsidized
adoptions, ch 201 1934
Regulatory Analysis, Iowa adoption
exchange, ch 203 1943
Regulatory Analysis, Subsidized
guardianship program, ch 204 1947

INTERIOR DESIGN EXAMINING**BOARD[193G]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Regulatory Analysis, Professional
conduct, ch 4 1954

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Notice, Temporary designation of
controlled substances, 10.39(2) **ARC 7104C** ... 3232

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

COMMERCE DEPARTMENT[181]"umbrella"

- Regulatory Analysis, Organization and
operation, ch 1 1959
Regulatory Analysis, Allocation of
disciplinary fees and costs, ch 2 1964
Regulatory Analysis, Vendor appeals, ch 3 1967
Regulatory Analysis, Social security
numbers and proof of legal presence, ch 4 1972
Regulatory Analysis, Investigatory
subpoenas, ch 6 1977
Regulatory Analysis, Contested cases, ch 7 1982
Regulatory Analysis, Sales and leases of
goods and services, ch 11 2007
Regulatory Analysis, Impaired licensee
review committees, ch 12 2011
Regulatory Analysis, Licensure by
verification or work experience, ch 14 2016
Regulatory Analysis, Use of criminal
convictions in eligibility determinations
and initial licensing decisions, ch 15 2020

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

| | | | |
|--|------|--|------|
| Regulatory Analysis, Board administrative processes, ch 4 | 2025 | Regulatory Analysis, Continuing education for barbering and cosmetology arts and sciences, ch 64 | 2173 |
| Regulatory Analysis, Fees, ch 5 | 2031 | Regulatory Analysis, Discipline for barbering and cosmetology arts and sciences licensees, instructors, establishments, and schools, ch 65 | 2179 |
| Regulatory Analysis, Complaints and investigations, ch 9 | 2043 | Regulatory Analysis, Licensure of dietitians, ch 81 | 2184 |
| Regulatory Analysis, Contested cases and informal settlement, ch 11 | 2048 | Regulatory Analysis, Continuing education for dietitians, ch 82 | 2192 |
| Regulatory Analysis, Discipline, ch 13 | 2064 | Regulatory Analysis, Discipline for dietitians, ch 83 | 2197 |
| Regulatory Analysis, Use of criminal convictions in eligibility determinations and initial licensing decisions, ch 14 | 2070 | Regulatory Analysis, Practice of funeral directors, funeral establishments, and cremation establishments, ch 100 | 2200 |
| Regulatory Analysis, Iowa professionals review committee, ch 16 | 2075 | Regulatory Analysis, Licensure of funeral directors, funeral establishments, and cremation establishments, ch 101 | 2212 |
| Regulatory Analysis, Licensure by verification and of applicants with work experience, ch 19 | 2080 | Regulatory Analysis, Continuing education for funeral directors, ch 102 | 2224 |
| Regulatory Analysis, Licensure of marital and family therapists, mental health counselors, behavior analysts, and assistant behavior analysts, ch 31 | 2084 | Regulatory Analysis, Enforcement proceedings against nonlicensees; disciplinary proceedings, rescind ch 103; adopt ch 104 | 2229 |
| Regulatory Analysis, Continuing education for marital and family therapists and mental health counselors, ch 32 | 2097 | Regulatory Analysis, Enforcement proceedings against nonlicensees, ch 105 | 2237 |
| Regulatory Analysis, Discipline for marital and family therapists, mental health counselors, behavior analysts, and assistant behavior analysts, ch 33 | 2102 | Regulatory Analysis, Licensure of hearing aid specialists, ch 121 | 2242 |
| Regulatory Analysis, Licensure of chiropractic physicians, ch 41 | 2106 | Regulatory Analysis, Continuing education for hearing aid specialists, ch 122 | 2249 |
| Regulatory Analysis, Colleges for chiropractic physicians, ch 42 | 2113 | Regulatory Analysis, Practice of hearing aid dispensing, ch 123 | 2254 |
| Regulatory Analysis, Practice of chiropractic physicians, ch 43 | 2118 | Regulatory Analysis, Discipline for hearing aid specialists, ch 124 | 2260 |
| Regulatory Analysis, Continuing education for chiropractic physicians, ch 44 | 2127 | Regulatory Analysis, Licensure of massage therapists, ch 131 | 2264 |
| Regulatory Analysis, Discipline for chiropractic physicians, ch 45 | 2132 | Regulatory Analysis, Massage therapy education curriculum, ch 132 | 2272 |
| Regulatory Analysis, Licensure of barbers, cosmetologists, electrologists, estheticians, nail technologists, and instructors of barbering and cosmetology arts and sciences, ch 60 | 2136 | Regulatory Analysis, Continuing education for massage therapists, ch 133 | 2277 |
| Regulatory Analysis, Licensure of establishments and schools of barbering and cosmetology arts and sciences, ch 61 | 2149 | Regulatory Analysis, Discipline for massage therapists, ch 134 | 2282 |
| Regulatory Analysis, Infection control for establishments and schools of barbering and cosmetology arts and sciences, ch 63 | 2163 | Regulatory Analysis, Licensure of nursing home administrators, ch 141 | 2287 |
| | | Regulatory Analysis, Continuing education for nursing home administration, ch 143 | 2294 |
| | | Regulatory Analysis, Discipline for nursing home administrators, ch 144 | 2299 |

PROFESSIONAL LICENSURE DIVISION[645]

(Cont'd)

| | | | |
|---|------|--|------|
| Regulatory Analysis, Licensure of optometrists, ch 180 | 2303 | Regulatory Analysis, Discipline for psychologists, ch 242 | 2425 |
| Regulatory Analysis, Continuing education for optometrists, ch 181 | 2309 | Regulatory Analysis, Practice of psychology, ch 243 | 2429 |
| Regulatory Analysis, Practice of optometrists, ch 182 | 2314 | Regulatory Analysis, Prescribing psychologists, ch 244 | 2435 |
| Regulatory Analysis, Discipline for optometrists, ch 183 | 2320 | Regulatory Analysis, Licensure of respiratory care practitioners, polysomnographic technologists, and respiratory care and polysomnography practitioners, ch 261 | 2449 |
| Regulatory Analysis, Licensure of physical therapists and physical therapist assistants, ch 200 | 2324 | Regulatory Analysis, Continuing education for respiratory care practitioners and polysomnographic technologists, ch 262 | 2458 |
| Regulatory Analysis, Practice of physical therapists and physical therapist assistants, ch 201 | 2333 | Regulatory Analysis, Practice of respiratory care practitioners and polysomnographic technologists, ch 265 | 2463 |
| Regulatory Analysis, Discipline for physical therapists and physical therapist assistants, ch 202 | 2341 | Regulatory Analysis, Licensure of speech pathologists and audiologists, ch 300 | 2470 |
| Regulatory Analysis, Continuing education for physical therapists and physical therapist assistants, ch 203 | 2345 | Regulatory Analysis, Practice of speech pathologists and audiologists, ch 301 | 2479 |
| Regulatory Analysis, Licensure of occupational therapists and occupational therapy assistants, ch 206 | 2350 | Regulatory Analysis, Continuing education for speech pathologists and audiologists, ch 303 | 2483 |
| Regulatory Analysis, Continuing education for occupational therapists and occupational therapy assistants, ch 207 | 2358 | Regulatory Analysis, Discipline for speech pathologists and audiologists, ch 304 | 2489 |
| Regulatory Analysis, Practice of occupational therapists and occupational therapy assistants, ch 208 | 2363 | Regulatory Analysis, Licensure of physician assistants, ch 326 | 2494 |
| Regulatory Analysis, Discipline for occupational therapists and occupational therapy assistants, ch 209 | 2370 | Regulatory Analysis, Practice of physician assistants, ch 327 | 2505 |
| Regulatory Analysis, Licensure of podiatrists, ch 220 | 2374 | Regulatory Analysis, Continuing education for physician assistants, ch 328 | 2516 |
| Regulatory Analysis, Licensure of orthotists, prosthetists, and pedorthists, ch 221 | 2382 | Regulatory Analysis, Discipline for physician assistants, ch 329 | 2521 |
| Regulatory Analysis, Continuing education for podiatrists, ch 222 | 2389 | Regulatory Analysis, Licensure of athletic trainers, ch 351 | 2526 |
| Regulatory Analysis, Practice of podiatry, ch 223 | 2394 | Regulatory Analysis, Continuing education for athletic trainers, ch 352 | 2534 |
| Regulatory Analysis, Discipline for podiatrists, orthotists, pedorthists, and prosthetists, ch 224 | 2399 | Regulatory Analysis, Discipline for athletic trainers, ch 353 | 2539 |
| Regulatory Analysis, Continuing education for orthotists, prosthetists, and pedorthists, ch 225 | 2403 | Regulatory Analysis, Licensure of sign language interpreters and transliterators, ch 361 | 2543 |
| Regulatory Analysis, Licensure of psychologists, ch 240 | 2408 | Regulatory Analysis, Continuing education for sign language interpreters and transliterators, ch 362 | 2551 |
| Regulatory Analysis, Continuing education for psychologists, ch 241 | 2419 | Regulatory Analysis, Discipline for sign language interpreters and transliterators, ch 363 | 2556 |

PUBLIC FUNDS—AVAILABILITY

| | |
|--|------|
| Homeland Security and Emergency Management Department, FEMA DR-4732-IA | 1626 |
|--|------|

PUBLIC HEALTH DEPARTMENT[641]

| | |
|--|------|
| Regulatory Analysis, Reportable diseases, poisonings and conditions, and quarantine and isolation, ch 1 | 2560 |
| Regulatory Analysis, Hepatitis programs, ch 2 | 2579 |
| Regulatory Analysis, Immunization and immunization education: persons attending elementary or secondary schools, licensed child care centers or institutions of higher education, ch 7 | 2583 |
| Regulatory Analysis, Human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS), ch 11 | 2594 |
| Regulatory Analysis, Practice of tattooing, ch 22 | 2607 |
| Regulatory Analysis, Plumbing and mechanical systems board—licensee practice, ch 23 | 2619 |
| Regulatory Analysis, Private well testing, reconstruction, and plugging—grants to counties, ch 24 | 2627 |
| Regulatory Analysis, Backflow prevention assembly tester registration, ch 26 | 2630 |
| Regulatory Analysis, Plumbing and mechanical systems board—administrative and regulatory authority, ch 27 | 2639 |
| Regulatory Analysis, Plumbing and mechanical systems board—licensure fees, ch 28 | 2644 |
| Regulatory Analysis, Plumbing and mechanical systems board—application, licensure, and examination, ch 29 | 2649 |
| Regulatory Analysis, Continuing education for plumbing and mechanical systems professionals, ch 30 | 2660 |
| Regulatory Analysis, Plumbing and mechanical systems board—licensee discipline, ch 32 | 2668 |
| Regulatory Analysis, Plumbing and mechanical systems board—contested cases, ch 33 | 2677 |

| | |
|--|------|
| Regulatory Analysis, Plumbing and mechanical systems board—complaints and investigations, ch 34 | 2698 |
| Regulatory Analysis, Plumbing and mechanical systems board—alternative licensure pathways, ch 35 | 2703 |
| Regulatory Analysis, Minimum requirements for tanning facilities, ch 46 | 2709 |
| Regulatory Analysis, Smokefree air, ch 153 | 2719 |
| Regulatory Analysis, Medical cannabidiol program, ch 154 | 2725 |
| Regulatory Analysis, Health data, ch 177 | 2765 |
| Regulatory Analysis, Impaired practitioner review committee, ch 193 | 2768 |
| Regulatory Analysis, Nonpayment of state debt, ch 194 | 2773 |
| Regulatory Analysis, Emergency medical services—military service, veteran reciprocity, and spouses of active duty service members, ch 196 | 2777 |
| Regulatory Analysis, Certificate of need program, ch 202 | 2781 |
| Regulatory Analysis, Standards for certificate of need review, ch 203 | 2790 |

PUBLIC HEARINGS

| | |
|-----------------------|------|
| Summarized list | 1611 |
|-----------------------|------|

PUBLIC SAFETY DEPARTMENT[661]

| | |
|--|------|
| Regulatory Analysis, Fire safe cigarette certification program, ch 61 | 2807 |
| Regulatory Analysis, Licensing for commercial explosive contractors and blasters, ch 235 | 2811 |
| Regulatory Analysis, Consumer fireworks retail seller licensing and wholesaler registration, ch 265 | 2819 |
| Regulatory Analysis, Licensing of fire protection system contractors, ch 275 | 2827 |
| Regulatory Analysis, Licensing of fire protection system technicians, ch 276 | 2837 |
| Regulatory Analysis, Licensing of alarm system contractors and technicians, ch 277 | 2846 |
| Regulatory Analysis, Electrician and electrical contractor licensing program—organization and administration, ch 500 | 2858 |
| Regulatory Analysis, Electrician and electrical contractor licensing program—licensing requirements, procedures, and fees, ch 502 | 2862 |

PUBLIC SAFETY DEPARTMENT[661] (Cont'd)

| | |
|---|------|
| Regulatory Analysis, Electrician and electrical contractor licensing program—complaints and discipline, ch 503... | 2876 |
| Regulatory Analysis, Electrician and electrical contractor licensing program—education, ch 505 | 2880 |

REAL ESTATE APPRAISER EXAMINING**BOARD[193F]**

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

| | |
|--|------|
| Regulatory Analysis, Organization and administration, ch 1 | 2885 |
| Regulatory Analysis, Definitions, ch 2 | 2890 |
| Regulatory Analysis, General provisions for examinations, ch 3 | 2893 |
| Regulatory Analysis, Associate real estate appraiser, ch 4 | 2897 |
| Regulatory Analysis, Certified real estate appraiser, ch 6 | 2902 |
| Regulatory Analysis, Disciplinary actions against certified and associate appraisers, ch 7 | 2909 |
| Regulatory Analysis, Investigations and disciplinary procedures, ch 8 | 2915 |
| Regulatory Analysis, Renewal, expiration and reinstatement of certificates and registrations, retired status, and inactive status, ch 9 | 2921 |
| Regulatory Analysis, Reciprocity, ch 10 | 2927 |
| Regulatory Analysis, Continuing education, ch 11 | 2932 |
| Regulatory Analysis, Fees, ch 12 | 2940 |
| Regulatory Analysis, Enforcement proceedings against nonlicensees, ch 16 | 2944 |
| Regulatory Analysis, Licensure of persons licensed in other jurisdictions, ch 26 | 2948 |

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

| | |
|--|------|
| Regulatory Analysis, Administration, ch 1 | 2952 |
| Regulatory Analysis, Definitions, ch 2 | 2955 |
| Regulatory Analysis, Broker license, ch 3 | 2961 |
| Regulatory Analysis, Salesperson license, ch 4 | 2966 |
| Regulatory Analysis, Licensees of other jurisdictions and reciprocity, ch 5 | 2972 |
| Regulatory Analysis, Termination and transfer, ch 6 | 2977 |
| Regulatory Analysis, Offices and management, ch 7 | 2980 |

| | |
|---|------|
| Regulatory Analysis, Closing a real estate business, ch 8 | 2991 |
| Regulatory Analysis, Fees, ch 9 | 2995 |
| Regulatory Analysis, Advertising, ch 10 | 2999 |
| Regulatory Analysis, Brokerage agreements and listings, ch 11 | 3003 |
| Regulatory Analysis, Disclosure of relationships, ch 12 | 3009 |
| Regulatory Analysis, Trust accounts and closings, ch 13 | 3019 |
| Regulatory Analysis, Seller property condition disclosure, ch 14 | 3027 |
| Regulatory Analysis, Property management, ch 15 | 3033 |
| Regulatory Analysis, Prelicense education and continuing education, ch 16 | 3037 |
| Regulatory Analysis, Approval of schools, courses and instructors, ch 17 | 3044 |
| Regulatory Analysis, Investigations and disciplinary procedures, ch 18 | 3052 |
| Regulatory Analysis, Requirements for mandatory errors and omissions insurance, ch 19 | 3063 |
| Regulatory Analysis, Time-share filing, ch 20 | 3070 |
| Regulatory Analysis, Enforcement proceedings against unlicensed persons, ch 21 | 3073 |

REVENUE DEPARTMENT[701]

| | |
|--|------|
| Regulatory Analysis, Exemption certificates, amend chs 202, 204; adopt ch 209; rescind ch 288 | 3078 |
| Regulatory Analysis, Purchases by businesses, ch 210 | 3087 |
| Regulatory Analysis, Taxable services, ch 211 ... | 3093 |
| Regulatory Analysis, Governments and nonprofits; exempt sales; taxable and exempt sales determined by method of transaction or usage, adopt chs 212, 285; rescind ch 284 | 3111 |
| Regulatory Analysis, Miscellaneous taxable sales, ch 213 | 3129 |
| Regulatory Analysis, Events, amusements, and other related activities, ch 216 | 3137 |
| Regulatory Analysis, Sales and services related to vehicles, ch 218 | 3142 |
| Regulatory Analysis, Sales and use tax on construction activities, ch 219 | 3147 |
| Regulatory Analysis, Exemptions primarily of benefit to consumers, ch 220 | 3170 |

REVENUE DEPARTMENT[701] (Cont'd)

Regulatory Analysis, Miscellaneous nontaxable transactions, ch 221 3190

Regulatory Analysis, Receipts subject to use tax; receipts exempt from use tax; receipts subject to use tax depending on method of transaction, rescind chs 280, 281; adopt ch 282 3194

Notice, Retirement income exclusion, 301.1, 301.5, 302.47, 302.80, 307.1, 307.3(5) **ARC 7109C**. 3234

Filed, Capital gain exclusion for elected employee-owned stock in a qualified corporation, 301.41 **ARC 7103C** 3253

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Regulatory Analysis, Adult education and literacy programs, ch 32 3201

Regulatory Analysis, Iowa vocational rehabilitation services, ch 33 3207

Notice, Regional industry sector partnerships, 7.25 **ARC 7107C** 3250

Notice, Statewide work-based learning intermediary network, rescind ch 31 **ARC 7108C** 3251

PREFACE

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

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

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

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

JACK EWING, Administrative Code Editor
Publications Editing Office (Administrative Code)

Telephone: 515.281.6048
Telephone: 515.281.3355

Email: Jack.Ewing@legis.iowa.gov
Email: AdminCode@legis.iowa.gov

CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rulemaking 2023

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

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|------------------------------|-------------------|
| 11 | Wednesday, November 8, 2023 | November 29, 2023 |
| 12 | Wednesday, November 22, 2023 | December 13, 2023 |
| 13 | Wednesday, December 6, 2023 | December 27, 2023 |

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 14, 2023, at 10:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

ECONOMIC DEVELOPMENT AUTHORITY[261]

Tax credit programs, 43.3, 47.3(3), 48.4(1), 116.3(6), 116.6 Notice **ARC 7106C**..... 11/1/23
Renewable chemical production tax credit program, ch 81 Notice **ARC 7105C**..... 11/1/23

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Temporary designation of controlled substances, 10.39(2) Notice **ARC 7104C** 11/1/23

REVENUE DEPARTMENT[701]

Settlement authority, rescind ch 3; amend chs 7, 10, 101, 108, 254, 300, 305, 504, 603, 700,
900; adopt ch 19 Notice **ARC 7101C** 10/18/23
Retirement income exclusion, 301.1, 301.5, 302.47, 302.80, 307.1, 307.3(5) Notice **ARC 7109C**..... 11/1/23
Capital gain exclusion for elected employee-owned stock in a qualified corporation, 301.41
Filed **ARC 7103C**..... 11/1/23
Capital gain deduction for certain types of net capital gains; net income from a farm tenancy
agreement covering real property, 302.38, 302.87, 302.88 Filed **ARC 7102C** 10/18/23

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER

ADMINISTRATION DIVISION[877]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Regional industry sector partnerships, 7.25 Notice **ARC 7107C** 11/1/23
Statewide work-based learning intermediary network, rescind ch 31 Notice **ARC 7108C** 11/1/23

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mike Klimesh
Vice Chair
Senate District 32

Representative Megan Jones
Chair
House District 6

Senator Nate Boulton
Senate District 20

Representative Amy Nielsen
House District 85

Senator Mike Bousset
Senate District 21

Representative Rick Olson
House District 39

Senator Waylon Brown
Senate District 30

Representative Mike Sexton
House District 7

Senator Cindy Winckler
Senate District 49

Representative David Young
House District 28

Jack Ewing
Administrative Code Editor
Capitol
Des Moines, Iowa 50319
Telephone: 515.281.6048
Fax: 515.281.8451
Email: jack.ewing@legis.iowa.gov

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

ACCOUNTANCY EXAMINING BOARD[193A]

Definitions, ch 1; organization and administration, ch 2; certification of CPAs, ch 3; licensure of LPAs, ch 4; licensure status and renewal of certificates and licenses, ch 5; attest and compilation services, ch 6; certified public accounting firms, ch 7; licensed public accounting firms, ch 8; reciprocity and substantial equivalency, ch 9; continuing education, ch 10; peer review, ch 11; fees, ch 12; rules of professional ethics and conduct, ch 13; disciplinary authority and grounds for discipline, ch 14; disciplinary investigations, ch 15; disciplinary proceedings, ch 16; enforcement proceedings against nonlicensees, ch 17; licensees' duty to report, ch 18; practice privilege for out-of-state certified public accountants, ch 20; practice privilege for out-of-state certified public accountant firms, ch 21

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

November 21, 2023
3:40 p.m.

ARCHITECTURAL EXAMINING BOARD[193B]

Description of organization, ch 1; licensure, ch 2; continuing education, ch 3; rules of conduct, ch 4; exceptions, ch 5; disciplinary action against licensees, ch 6; disciplinary action—unlicensed practice, ch 7

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

November 21, 2023
3:30 p.m.

ECONOMIC DEVELOPMENT AUTHORITY[261]

Renewable chemical production tax credit program, ch 81
IAB 11/1/23 **ARC 7105C**

1963 Bell Ave.
Des Moines, Iowa
Registration information for online participation may be found at
www.iowaeda.com/red-tape-review/

November 28, 2023
9 to 9:30 a.m.

1963 Bell Ave.
Des Moines, Iowa
Registration information for online participation may be found at
www.iowaeda.com/red-tape-review/

December 4, 2023
1:30 to 2 p.m.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Administration, ch 1; fees and charges, ch 2; application and renewal process, ch 3; engineering licensure, ch 4; land surveying licensure, ch 5; seal and certificate of responsibility, ch 6; professional development, ch 7; professional conduct of licensees, ch 8; complaints, investigations and disciplinary action, ch 9; peer review, ch 10; minimum standards for property surveys, ch 11; minimum standards for U.S. public land survey corner certificates, ch 12; civil penalties for unlicensed practice, ch 13

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.

Des Moines, Iowa

Video/conference call:

meet.google.com/bfq-qaeb-nwu

Or dial: 1.402.921.2210

PIN: 301 728 068#

More phone numbers:

tel.meet/bfq-qaeb-nwu?pin=7324359836726

November 21, 2023

4 p.m.

EXECUTIVE COUNCIL[361]

Group insurance for state employees; deferred compensation program; health maintenance organizations, adopt ch 1; rescind chs 5, 6

IAB 11/1/23

Regulatory Analysis

Room G9, Iowa State Capitol

1007 East Grand Ave.

Des Moines, Iowa

November 27, 2023

11:30 a.m.

Contingent fund—disaster aid; disaster contingency fund, adopt ch 2; rescind ch 7

IAB 11/1/23

Regulatory Analysis

Room G9, Iowa State Capitol

1007 East Grand Ave.

Des Moines, Iowa

November 27, 2023

11:45 a.m.

Inheritance tax payments, adopt ch 3; rescind ch 11

IAB 11/1/23

Regulatory Analysis

Room G9, Iowa State Capitol

1007 East Grand Ave.

Des Moines, Iowa

November 27, 2023

12 noon

Disbursement of money from civil reparations trust fund, adopt ch 4; rescind ch 12

IAB 11/1/23

Regulatory Analysis

Room G9, Iowa State Capitol

1007 East Grand Ave.

Des Moines, Iowa

November 27, 2023

12:15 p.m.

HUMAN SERVICES DEPARTMENT[441]

Uniform rules on agency procedure, chs 1, 3 to 6, 9, 16; payment of small claims, ch 8; collection of debt, ch 11; program evaluation, ch 13; fiscal oversight of the early childhood Iowa initiative, ch 122; adoption services, ch 200; subsidized adoptions, ch 201; Iowa adoption exchange, ch 203; subsidized guardianship program, ch 204
IAB 11/1/23

Regulatory Analyses

Video/conference call:
meet.google.com/nkg-jzin-yvp

November 28, 2023
10 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Home food processing establishments, ch 34
IAB 10/18/23

Regulatory Analysis

6200 Park Ave.
Des Moines, Iowa

November 8, 2023
9:20 a.m.

INTERIOR DESIGN EXAMINING BOARD[193G]

Professional conduct, ch 4
IAB 11/1/23

Regulatory Analysis

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/vic-ewjz-qdz
Or dial: 1.336.515.0134
PIN: 836 758 241#
More phone numbers:
tel.meet/vic-ewjz-qdz?pin=5875932671903

November 21, 2023
9:20 a.m.

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

Organization and operation, ch 1; allocation of disciplinary fees and costs, ch 2; vendor appeals, ch 3; social security numbers and proof of legal presence, ch 4; investigatory subpoenas, ch 6; contested cases, ch 7; sales and leases of goods and services, ch 11; impaired licensee review committees, ch 12; licensure by verification or work experience, ch 14; use of criminal convictions in eligibility determinations and initial licensing decisions, ch 15
IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

November 21, 2023
3:10 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Board administrative processes, ch 4; fees, ch 5; complaints and investigations, ch 9; contested cases and informal settlement, ch 11; discipline, ch 13; use of criminal convictions in eligibility determinations and initial licensing decisions, ch 14; Iowa professionals review committee, ch 16; licensure by verification and of applicants with work experience, ch 19

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

November 21, 2023
9 a.m.

Licensure of marital and family therapists, mental health counselors, behavior analysts, and assistant behavior analysts, ch 31; continuing education for marital and family therapists and mental health counselors, ch 32; discipline for marital and family therapists, mental health counselors, behavior analysts, and assistant behavior analysts, ch 33

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

November 21, 2023
9:40 to 10 a.m.

Licensure of, colleges for, practice of, continuing education for, and discipline for chiropractic physicians, chs 41 to 45

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

November 21, 2023
12:30 p.m.

Licensure of barbers, cosmetologists, electrologists, estheticians, nail technologists, and instructors of barbering and cosmetology arts and sciences, ch 60; licensure of establishments and schools of barbering and cosmetology arts and sciences, ch 61; infection control for establishments and schools of barbering and cosmetology arts and sciences, ch 63; continuing education for barbering and cosmetology arts and sciences, ch 64; discipline for barbering and cosmetology arts and sciences licensees, instructors, establishments, and schools, ch 65

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

November 21, 2023
1:50 to 2:10 p.m.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- | | | |
|---|--|--|
| <p>Licensure of dietitians, ch 81; continuing education for dietitians, ch 82; discipline for dietitians, ch 83 IAB 11/1/23 Regulatory Analyses</p> | <p>6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Phone numbers: tel.meet/bfq-qaeb-nwu?pin=7324359836726</p> | <p>November 21, 2023 2:10 to 2:30 p.m.</p> |
| <p>Practice of funeral directors, funeral establishments, and cremation establishments, ch 100; licensure of funeral directors, funeral establishments, and cremation establishments, ch 101; continuing education for funeral directors, ch 102; enforcement proceedings against nonlicensees; disciplinary proceedings, rescind ch 103; adopt ch 104; enforcement proceedings against nonlicensees, ch 105 IAB 11/1/23 Regulatory Analyses</p> | <p>6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Or dial: 1.402.921.2210 PIN: 301 728 068#</p> | <p>November 21, 2023 1:30 p.m.</p> |
| <p>Licensure of hearing aid specialists, ch 121; continuing education for hearing aid specialists, ch 122; practice of hearing aid dispensing, ch 123; discipline for hearing aid specialists, ch 124 IAB 11/1/23 Regulatory Analyses</p> | <p>6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Or dial: 1.402.921.2210 PIN: 301 728 068#</p> | <p>November 21, 2023 10:50 a.m.</p> |
| <p>Licensure of massage therapists, ch 131; massage therapy education curriculum, ch 132; continuing education for massage therapists, ch 133; discipline for massage therapists, ch 134 IAB 11/1/23 Regulatory Analyses</p> | <p>6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/vic-ewjz-qdz Or dial: 1.336.515.0134 PIN: 836 758 241#</p> | <p>November 21, 2023 9 a.m.</p> |
| <p>Licensure of nursing home administrators, ch 141; continuing education for nursing home administration, ch 143; discipline for nursing home administrators, ch 144 IAB 11/1/23 Regulatory Analyses</p> | <p>6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Or dial: 1.402.921.2210 PIN: 301 728 068#</p> | <p>November 21, 2023 11:30 a.m.</p> |

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Licensure of optometrists, ch 180; continuing education for optometrists, ch 181; practice of optometrists, ch 182; discipline for optometrists, ch 183
IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

November 21, 2023
11:50 a.m.

Licensure of physical therapists and physical therapist assistants, ch 200; practice of physical therapists and physical therapist assistants, ch 201; discipline for physical therapists and physical therapist assistants, ch 202; continuing education for physical therapists and physical therapist assistants, ch 203; licensure of occupational therapists and occupational therapy assistants, ch 206; continuing education for occupational therapists and occupational therapy assistants, ch 207; practice of occupational therapists and occupational therapy assistants, ch 208; discipline for occupational therapists and occupational therapy assistants, ch 209
IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

November 21, 2023
2:30 to 2:50 p.m.

Licensure of podiatrists, ch 220; licensure of orthotists, prosthetists, and pedorthists, ch 221; continuing education for podiatrists, ch 222; practice of podiatry, ch 223; discipline for podiatrists, orthotists, pedorthists, and prosthetists, ch 224; continuing education for orthotists, prosthetists, and pedorthists, ch 225
IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

November 21, 2023
10:20 to 10:40 a.m.

Licensure of psychologists, ch 240; continuing education for psychologists, ch 241; discipline for psychologists, ch 242; practice of psychology, ch 243; prescribing psychologists, ch 244
IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

November 21, 2023
9:20 to 9:40 a.m.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- | | | |
|---|--|--|
| Licensure of respiratory care practitioners, polysomnographic technologists, and respiratory care and polysomnography practitioners, ch 261; continuing education for respiratory care practitioners and polysomnographic technologists, ch 262; practice of respiratory care practitioners and polysomnographic technologists, ch 265 IAB 11/1/23 Regulatory Analyses | 6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Or dial: (US) 1.402.921.2210 PIN: 301 728 068# | November 21, 2023 12:50 p.m. |
| Licensure of speech pathologists and audiologists, ch 300; practice of speech pathologists and audiologists, ch 301; continuing education for speech pathologists and audiologists, ch 303; discipline for speech pathologists and audiologists, ch 304 IAB 11/1/23 Regulatory Analyses | 6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Phone: 1.402.921.2210 PIN: 301 728 068# | November 21, 2023 11:10 a.m. |
| Licensure of physician assistants, ch 326; practice of physician assistants, ch 327; continuing education for physician assistants, ch 328; discipline for physician assistants, ch 329 IAB 11/1/23 Regulatory Analyses | 6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Or dial: 1.402.921.2210 PIN: 301 728 068# | November 8, 2023 1:10 p.m. |
| Licensure of athletic trainers, ch 351; continuing education for athletic trainers, ch 352; discipline for athletic trainers, ch 353 IAB 11/1/23 Regulatory Analyses | 6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Phone numbers: tel.meet/bfq-qaeb-nwu?pin=7324359836726 | November 21, 2023 2:50 to 3:10 p.m. |
| Licensure of sign language interpreters and transliterators, ch 361; continuing education for sign language interpreters and transliterators, ch 362; discipline for sign language interpreters and transliterators, ch 363 IAB 11/1/23 Regulatory Analyses | 6200 Park Ave. Des Moines, Iowa Video/conference call: meet.google.com/bfq-qaeb-nwu Or dial: 1.402.921.2210 PIN: 301 728 068# | November 21, 2023 12:10 p.m. |

PUBLIC HEALTH DEPARTMENT[641]

Reportable diseases, poisonings and conditions, and quarantine and isolation, ch 1; hepatitis programs, ch 2; immunization and immunization education: persons attending elementary or secondary schools, licensed child care centers or institutions of higher education, ch 7; human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS), ch 11; private well testing, reconstruction, and plugging—grants to counties, ch 24; smokefree air, ch 153; medical cannabidiol program, ch 154; health data, ch 177; nonpayment of state debt, ch 194; emergency medical services—military service, veteran reciprocity, and spouses of active duty service members, ch 196

IAB 11/1/23

Regulatory Analyses

Video/conference call:
meet.google.com/nkg-jzin-yvp

November 28, 2023
10 a.m.

Practice of tattooing, ch 22; backflow prevention assembly tester registration, ch 26; minimum requirements for tanning facilities, ch 46
IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa

November 21, 2023
9:40 a.m.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

| | | |
|--|------------------------------------|--------------------------------|
| Plumbing and mechanical systems board—licensee practice, ch 23; plumbing and mechanical systems board—administrative and regulatory authority, ch 27; plumbing and mechanical systems board—licensure fees, ch 28; plumbing and mechanical systems board—application, licensure, and examination, ch 29; continuing education for plumbing and mechanical systems professionals, ch 30; plumbing and mechanical systems board—licensee discipline, ch 32; plumbing and mechanical systems board—contested cases, ch 33; plumbing and mechanical systems board—complaints and investigations, ch 34; plumbing and mechanical systems board—alternative licensure pathways, ch 35; impaired practitioner review committee, ch 193 IAB 11/1/23 Regulatory Analyses | 6200 Park Ave. Des Moines, Iowa | November 21, 2023 9:20 a.m. |
| Certificate of need program, ch 202 IAB 11/1/23 Regulatory Analysis | 6200 Park Ave. Des Moines, Iowa | November 21, 2023 8 a.m. |
| Standards for certificate of need review, ch 203 IAB 11/1/23 Regulatory Analysis | 6200 Park Ave. Des Moines, Iowa | November 21, 2023 8 a.m. |

PUBLIC SAFETY DEPARTMENT[661]

Fire safe cigarette certification program, ch 61; licensing for commercial explosive contractors and blasters, ch 235; consumer fireworks retail seller licensing and wholesaler registration, ch 265; licensing of fire protection system contractors, ch 275; licensing of fire protection system technicians, ch 276; licensing of alarm system contractors and technicians, ch 277; electrician and electrical contractor licensing program—organization and administration, ch 500; electrician and electrical contractor licensing program—licensing requirements, procedures, and fees, ch 502; electrician and electrical contractor licensing program—complaints and discipline, ch 503; electrician and electrical contractor licensing program—education, ch 505

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa

November 21, 2023
10 a.m.

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Organization and administration, ch 1; definitions, ch 2; general provisions for examinations, ch 3; associate real estate appraiser, ch 4; certified real estate appraiser, ch 6; disciplinary actions against certified and associate appraisers, ch 7; investigations and disciplinary procedures, ch 8; renewal, expiration and reinstatement of certificates and registrations, retired status, and inactive status, ch 9; reciprocity, ch 10; continuing education, ch 11; fees, ch 12; enforcement proceedings against nonlicensees, ch 16; licensure of persons licensed in other jurisdictions, ch 26

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa
Video/conference call:
meet.google.com/bfq-qacb-nwu

November 21, 2023
8:20 to 8:40 a.m.

REAL ESTATE COMMISSION[193E]

Administration, ch 1; definitions, ch 2; broker license, ch 3; salesperson license, ch 4; licensees of other jurisdictions and reciprocity, ch 5; termination and transfer, ch 6; offices and management, ch 7; closing a real estate business, ch 8; fees, ch 9; advertising, ch 10; brokerage agreements and listings, ch 11; disclosure of relationships, ch 12; trust accounts and closings, ch 13; seller property condition disclosure, ch 14; property management, ch 15; prelicense education and continuing education, ch 16; approval of schools, courses and instructors, ch 17; investigations and disciplinary procedures, ch 18; requirements for mandatory errors and omissions insurance, ch 19; time-share filing, ch 20; enforcement proceedings against unlicensed persons, ch 21

IAB 11/1/23

Regulatory Analyses

6200 Park Ave.
Des Moines, Iowa

November 21, 2023
8:40 a.m.

REVENUE DEPARTMENT[701]

Settlement authority, rescind ch 3; amend chs 7, 10, 101, 108, 254, 300, 305, 504, 603, 700, 900; adopt ch 19
IAB 10/18/23 **ARC 7101C**

Via video/conference call
Contact Alana Stamas
Email: alana.stamas@iowa.gov

November 8, 2023
1 to 2 p.m.
(If requested)

Sales and use tax permits, ch 201; filing returns and payment of tax, ch 202; remote sales and marketplace sales, ch 207; multilevel marketer agreements, ch 208; agricultural rules, ch 214; exemptions primarily benefiting manufacturers and other persons engaged in processing, ch 215; telecommunication services, ch 217; flood mitigation program, ch 272; reinvestment districts program, ch 273; rebate of Iowa sales tax paid, ch 275
IAB 10/18/23

Regulatory Analyses

Via video/conference call:
meet.google.com/msc-ekdk-xws
Or dial: 1.262.864.1688
PIN: 672 555 995#

November 8, 2023
9 a.m. to 12 noon

REVENUE DEPARTMENT[701](cont'd)

Exemption certificates, amend chs 202, 204, adopt ch 209, rescind ch 288; purchases by businesses, ch 210; taxable services, ch 211; governments and nonprofits, exempt sales, taxable and exempt sales determined by method of transaction or usage, adopt chs 212, 285, rescind ch 284; miscellaneous taxable sales, ch 213; events, amusements, and other related activities, ch 216; sales and services related to vehicles, ch 218; sales and use tax on construction activities, ch 219; exemptions primarily of benefit to consumers, ch 220; miscellaneous nontaxable transactions, ch 221; receipts subject to use tax; receipts exempt from use tax; receipts subject to use tax depending on method of transaction, rescind chs 280, 281; adopt ch 282
IAB 11/1/23

Regulatory Analyses

Video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#

November 21, 2023
9 to 11 a.m.

Retirement income exclusion, 301.1, 301.5, 302.47, 302.80, 307.1, 307.3(5)
IAB 11/1/23 **ARC 7109C**

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

November 21, 2023
11 a.m. to 12 noon
(If requested)

TRANSPORTATION DEPARTMENT[761]

Commercial driver's licenses; commercial learner's permits, amendments to chs 511, 607
IAB 10/18/23

Regulatory Analysis

First Floor Training Room
Motor Vehicle Division
6310 SE Convenience Blvd.
Ankeny, Iowa

November 13, 2023
10 a.m.

VETERINARY MEDICINE BOARD[811]

Description of organization and definitions, ch 1; petitions for rulemaking, ch 2; declaratory orders, ch 3; agency procedure for rulemaking, ch 4; public records and fair information practices, ch 5; application for veterinary licensure, ch 6; veterinary examinations, ch 7; auxiliary personnel, ch 8; temporary veterinary permits, ch 9; discipline; contested cases, chs 10, 16; continuing education, ch 11; standards of practice, ch 12; collection procedures, ch 13; waiver of rules, ch 14
IAB 10/18/23

Regulatory Analyses

Second Floor Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

November 13, 2023
10 a.m.

**WORKFORCE DEVELOPMENT BOARD AND
WORKFORCE DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]**

| | | |
|---|---|------------------------------------|
| Regional industry sector partnerships, 7.25 IAB 11/1/23 ARC 7107C | Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa | November 21, 2023 10 to 11 a.m. |
| Statewide work-based learning intermediary network, rescind ch 31 IAB 11/1/23 ARC 7108C | Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa | November 21, 2023 9 to 10 a.m. |
| Adult education and literacy programs, ch 32 IAB 11/1/23 Regulatory Analysis | 1000 East Grand Ave. Des Moines, Iowa | November 21, 2023 11 a.m. |
| Iowa vocational rehabilitation services, ch 33 IAB 11/1/23 Regulatory Analysis | 1000 East Grand Ave. Des Moines, Iowa | November 21, 2023 12 noon |

The following list will be updated as changes occur.

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

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

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGING, DEPARTMENT ON[17]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Soil Conservation and Water Quality Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
 OMBUDSMAN[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Interior Design Examining Board[193G]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT AUTHORITY[261]
 City Development Board[263]
 IOWA FINANCE AUTHORITY[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 HUMAN RIGHTS DEPARTMENT[421]
 HUMAN SERVICES DEPARTMENT[441]
 INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Child Advocacy Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
 IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
 IOWA PUBLIC INFORMATION BOARD[497]
 LAW ENFORCEMENT ACADEMY[501]

LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Professional Licensure Division[645]
 Dental Board[650]
 Medicine Board[653]
 Nursing Board[655]
 Pharmacy Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and Workforce Development Center Administration Division[877]

| AGENCY | PROGRAM | ELIGIBLE APPLICANTS | TYPES OF PROJECTS |
|---|---|---|--|
| <p>Iowa Homeland Security and Emergency Management Department (HSEMD)</p> | <p>Hazard Mitigation Grant Program (HMGP)</p> <p>Authorized by §404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)</p> | <ul style="list-style-type: none"> • State Agencies and Local Governments. • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations. • Private Nonprofit (PNP) Organizations or institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221(e). • All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. • All applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan. <p>Application Process:</p> <ul style="list-style-type: none"> - Potential project & planning applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: homelandsecurity.iowa.gov/grants-overview/grants/#HMA - NOIs will be selected for full application development based on funding availability, the State's priority, and an initial eligibility review. - NOIs will be accepted on a continuous basis or until otherwise notified. <p>For additional information, please contact:</p> <p>Dusty Pogones 515.344.9049 Mat Noble 515.321.8528</p> <p>Iowa Homeland Security and Emergency Management Department 7900 Hickman Road, Ste. 500 Windsor Heights, Iowa 50324</p> | <p>Eligible Project Types</p> <p>Projects may be of any nature that will result in protection to public or private property, including but not limited to:</p> <ul style="list-style-type: none"> • Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity • Construction of safe rooms (tornado and severe wind shelters) • Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, flood-proofing, storm shutters, hurricane clips) • Minor structural hazard control or protection projects that may include vegetation management, storm water management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system • Development of multi-jurisdictional hazard mitigation plans and plan updates <p>Planning Application</p> <p>The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.</p> |

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 1
“Definitions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

This proposed chapter includes definitions that will help licensees and the general public better understand the remaining chapters of [193A].

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees, future licensees, and the general public are impacted by this proposed chapter because it provides them with the definitions needed to better understand the remaining chapters of [193A].
 - Classes of persons that will benefit from the proposed rulemaking:

Licensees, future licensees, and the general public will benefit from the definitions included in this chapter.

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

- Quantitative description of impact:

Because this chapter is comprised of definitions only, there is no economic impact of this chapter. The 7,571 Certified Public Accountant (CPA)/Licensed Public Accountant (LPA) licensees, plus 3.2 million Iowans, are positively impacted by the definitions in Chapter 1 because it helps establish a shared understanding of terms that might otherwise be left open to interpretation. No new fees are being imposed, so the economic impact is negligible or nonexistent.

- Qualitative description of impact:

The proposed revisions will make the rules and requirements for professional licensing easier to understand. Iowans are protected by the laws of professional licensing through responsible regulations. The Accountancy Examining Board ensures minimum standards for licensing and resolves complaints against licensees.

3. Costs to the State:

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

The only costs will be regular staff costs to the state agency, incurred by occasionally directing inquiries to Chapter 1.

- Anticipated effect on state revenues:

This chapter does not have a significant impact on state revenues. Staff salaries and per diems to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

Since no fees are included in Chapter 1, the costs and benefits of the rulemaking and the costs and benefits of inaction are essentially the same.

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

There were no less costly methods considered, due to the fact that Chapter 1 is informational only.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board. The Board felt that definitions of professional terms were necessary to offer interested parties a better understanding of the language used in the remaining chapters. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

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

Chapter 1 has played an important role in providing a better understanding of the profession to licensees and the public. The Board believes that removing any definitions could confuse stakeholders.

Small Business Impact

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

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

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

Iowa licenses Certified Public Accountant and Licensed Public Accountant firms, some of which are small businesses. The substantial impact on licensed small businesses from this chapter is in the form of providing helpful information to licensed small business owners in an effort to help them maintain compliance with Iowa’s law.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
DEFINITIONS

193A—1.1(542) Definitions. The following definitions apply to the rules of the board of accountancy.

“*Act*” means the Accountancy Act of 2001 as amended by 2008 Iowa Acts, chapter 1106.

“*AICPA*” means the American Institute of Certified Public Accountants.

“*AICPA Code of Professional Conduct*” means the AICPA code of professional conduct as amended through January 1, 2024.

“*Attest*” or “*attest service*” means the same as defined in Iowa Code section 542.3(1).

“*Attest engagement team*” means the team of individuals participating in attest service, including those who perform concurring and second partner reviews. The “attest engagement team” includes all employees and contractors retained by the firm who participate in attest service, irrespective of their functional classification.

“*Audit*” means the procedures performed in accordance with applicable auditing standards for the purpose of expressing or disclaiming an opinion on the fairness with which the historical financial or other information is presented in conformity with generally accepted accounting principles, another comprehensive basis of accounting, or basis of accounting described in the report.

“*Board*” means the same as defined in Iowa Code section 542.3(2).

“*Certificate*” means the same as defined in Iowa Code section 542.3(3).

“*Client*” means the same as defined in Iowa Code section 542.3(6).

“*Commission*” means the same as defined in Iowa Code section 542.3(7) and includes any form of compensation in a fixed or variable amount or percentage received for selling, recommending or referring any product or service of another, including a referral fee.

“*Compensation*” means anything of value received by a CPA or LPA while practicing public accounting for selling, recommending or referring a product or service of another.

“*Compilation*” means the same as defined in Iowa Code section 542.3(8).

“*Contingent fee*” means the same as defined in Iowa Code section 542.3(9).

“*Certified public accountant*” or “*CPA*” means the same as defined in Iowa Code section 542.3(4).

“*Examination of prospective financial information*” means an evaluation by a CPA of a forecast or projection, the support underlying the assumptions in the forecast or projection, whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines, and whether the assumptions in the forecast or projection provide a reasonable basis for the projection or forecast.

“*FASB*” means the Financial Accounting Standards Board.

“*Financial statement*” means a presentation of financial data, including accompanying notes derived from accounting records and intended to communicate an entity’s economic resources or obligations at a point in time or the changes therein for a period of time in conformity with a comprehensive basis of accounting, but does not include incidental financial data included in management advisory services reports to support recommendations to a client, nor does it include tax returns and supporting documents.

“*Firm*” means a sole proprietorship, partnership, corporation, professional corporation, professional limited liability company, limited liability partnership or any other form of organization issued a permit to practice as a firm under Iowa Code section 542.7 or 542.8 or the office of the auditor of state, state of Iowa, when the auditor of state is a certified public accountant.

“*Forecast*” means prospective financial statements that present, to the best of the responsible party’s knowledge and belief, an entity’s expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party’s assumptions reflecting conditions it expects to exist and the course of action it expects to take.

“*GASB*” means the Governmental Accounting Standards Board.

“*Home office*” means the same as defined in Iowa Code section 542.3(10).

“*IASB*” means International Accounting Standards Board.

“*IFRS*” means International Financial Reporting Standards.

“*IRS*” means the Internal Revenue Service, United States Department of the Treasury.

“*License*” means the same as defined in Iowa Code section 542.3(11).

“*Licensed public accountant*” or “*LPA*” means the same as defined in Iowa Code section 542.3(12).

“*Licensed public accounting firm*” means the same as defined in Iowa Code section 542.3(13).

“*Licensee*” means the same as defined in Iowa Code section 542.3(14).

“*Managing partner,*” “*managing shareholder,*” or “*managing member*” means the designated individual with ultimate responsibility for the operation of a firm’s practice.

“*NASBA*” means the same as defined in Iowa Code section 542.3(17).

“*NSA*” means the National Society of Accountants.

“*Office*” means the same as defined in Iowa Code section 542.3(18).

“*Owner*” means any person who has equity ownership interest in a CPA or LPA firm.

“*PCAOB*” means Public Company Accounting Oversight Board created by the Sarbanes-Oxley Act of 2002.

“*Peer review,*” as used in Chapters 11 and 12 of these rules, means the same as defined in Iowa Code section 542.3(19).

“*Person,*” unless the context indicates otherwise, means individuals, sole proprietorships, partnerships, corporations, limited liability companies, limited liability partnerships or other forms of entities.

“*Person associated with a CPA or LPA*” means any owner, partner, shareholder, member, employee, assistant, or independent contractor of a CPA or LPA firm.

“*Practice of public accounting*” means the same as defined in Iowa Code section 542.3(24).

“*Practice privilege*” means the same as defined in Iowa Code section 542.3(25).

“*Principal place of business*” means the same as defined in Iowa Code section 542.3(26).

“*Projection*” means prospective financial statements that present, to the best of the responsible party’s knowledge and belief given one or more hypothetical assumptions, an entity’s expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party’s assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions.

“*Report*” means the same as defined in Iowa Code section 542.3(27).

“*Respondent*” means any person against whom a formal statement of charges has been filed.

“*Review*” means the same as Iowa Code section 542.3(1) “a”(2).

“*SAS*” means statements on auditing standards.

“*SEC*” means the United States Securities and Exchange Commission.

“*SSARS*” means the statements on standards for accounting and review services.

“*State*” means the same as defined in Iowa Code section 542.3(28).

“*Substantial equivalency*” means the same as defined in Iowa Code section 542.3(29).

“*Year*,” when used in the context as a time measurement of experience in accounting work, means a period of 365 days.

This rule is intended to implement Iowa Code chapter 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 2
“Organization and Administration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The purpose of proposed Chapter 2 is to inform Iowans of the structure and functionality of the Accountancy Examining Board, which benefits the public by providing helpful information on how the Board carries out its mission.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Department bears the cost of board meetings, in the way of \$50 per diem per Board member, per meeting, plus travel expenses as needed. Travel expenses in 2022 were approximately \$500. Staff

salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The intended benefit is to inform the licensees and the public on the structure and functionality of the Board.

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

- Quantitative description of impact:

There are no costs to the public. The expenses of the Board, per diems and travel reimbursement, are paid by the Department, which is funded by licensing fees. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Iowans are protected by the laws of professional licensing. The Board ensures minimum standards for licensing and resolves complaints against licensees.

3. Costs to the State:

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

Costs to the Board are staff time needed to manage Board activities, and to pay the Board members \$50 per diem per board member per meeting, and reimburse travel expenses. Travel reimbursements for Board meetings in 2022 were approximately \$500.

- Anticipated effect on state revenues:

There is not a significant impact to state revenues by this chapter. Staff salaries are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

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

Eliminating the Board would have an unnoticeable impact on state revenues. The Board believes all current requirements ensure public safety and ensure a minimum competency which serves to protect Iowans.

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

Less restrictive alternatives would dilute the protection of the public. Reducing the nominal pay to the Board or reducing/eliminating travel expense reimbursement may serve to also reduce the interest of individuals to sit on the licensing board.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board. These rules offer the public helpful information regarding the structure of the Board. While the Board is not inclined at this time to make changes, it will consider evidence for future review.

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

Licensing and regulation are required by Iowa Code chapter 542. The rules support the law.

Small Business Impact

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

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

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

Iowa licenses Certified Public Accountant (CPA) and Licensed Public Accountant (LPA) firms, many of which are small businesses. The rules for CPA and LPA firms are covered in other chapters. The rules in Chapter 2 are informative only.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 2 and adopt the following new chapter in lieu thereof:

CHAPTER 2
ORGANIZATION AND ADMINISTRATION

193A—2.1(542) Description.

2.1(1) The accountancy examining board administers and enforces the provisions of Iowa Code chapter 542 with regard to the practice of accountancy in the state.

2.1(2) The primary mission of the board is to protect the public interest.

193A—2.2(542) Advisory committees. The board chair may appoint advisory committees composed of board members to make recommendations on matters within the board's jurisdiction.

193A—2.3(542) Annual meeting. At the first board meeting scheduled after April 30 of each year (the annual meeting), the board will elect a chair and vice-chair to serve until their successors are elected.

193A—2.4(542) Other meetings. Other meetings throughout the year may be established by the chairperson, by board resolution, or by a request of a majority of board members.

193A—2.5(542) Board administrator's duties. The board administrator's duties include the following:

2.5(1) Ensuring that complete records are kept of all applications for examination and registration; all certificates, licenses and permits granted; and all necessary information in regard thereto. The board administrator is the lawful custodian of the board records.

2.5(2) Determining when the preconditions for licensure have been satisfied with regard to issuance of certificates, licenses or registrations.

2.5(3) Submitting to the board any questionable application.

2.5(4) Keeping accurate minutes of board meetings.

2.5(5) Keeping a list of persons issued certificates as certified public accountants, persons issued licenses as licensed public accountants, and all firms issued permits to practice.

2.5(6) Performing such additional administrative duties as assigned.

193A—2.6(542) Disclosure of confidential information.

2.6(1) Persons who take the examination may consent to the publication of their names on a list of passing candidates.

2.6(2) Information relating to the examination results, including the specific grades by subject matter, may only be given to the person who took the examination, except that the board may:

a. Disclose the specific grades by subject matter to the regulatory authority of any other state or foreign country in connection with the candidate's application for a reciprocal certificate or license from the other state or foreign country, but only if requested by the applicant.

b. Disclose the specific grades by subject matter to educational institutions, professional organizations, or others, provided the names of the persons taking the examination are not provided in conjunction with the scores.

193A—2.7(17A,21,22,272C,542) Uniform rules. Administrative and procedural rules can be found in rules of the professional licensing and regulation bureau[193].

These rules are intended to implement Iowa Code chapters 17A, 21, 22, 272C and 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 3
“Certification of CPAs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

This proposed chapter provides useful information to future licensees on the education, examination, and experience requirements to acquire an Iowa Certified Public Accountant (CPA) license. It also serves to inform Iowans of the background of the individuals with whom they may be doing business.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the public. Future licensees are impacted by this chapter because they incur the costs of a college education, plus the costs of examinations. Experience for the license is generally through paid positions.

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

Future licensees will be the primary beneficiaries of the information in Chapter 3. The general public will also benefit from knowing the criteria to become a CPA. These rules ensure a standardized baseline for education, offering protection to the public who utilizes CPA services, since CPAs deal with sensitive, critical information for businesses and individuals.

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

- Quantitative description of impact:

Individuals seeking a license are required to have a college degree. The average cost of a college education is \$36,500 per year. The cost of the examination, required of all CPAs, is \$480 and is paid to a private entity. The cost of the license is \$100. Experience for the license is generally acquired in paid positions.

- Qualitative description of impact:

The primary impact of this rulemaking is to the Iowans who utilize CPA services and are protected by the rules relating to becoming a CPA. There is an additional impact on potential licensees, who may take into account these rules when deciding a career path. The education and examination standards for a license as a CPA are consistent with 54 other jurisdictions, including all 50 U.S. states.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to review applications to ensure compliance with the rules in Chapter 3 and needed to manage Accountancy Examining Board activities. An executive officer supports the full scope of work of this Board at approximately 0.31 full-time equivalent (FTE) position, which includes answering questions from the public and licensees relating to practice standards, continuing education, Board meeting administration, and more. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs of the necessary education to comply with the rulemaking are paid to the schools. Costs of the examination are paid to the examination administrator. This rulemaking does not have an anticipated impact on state revenue.

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

The Board believes elimination of the level of education and comprehensive nature of the examinations would greatly reduce the level of knowledge and expertise of licensed accountants in Iowa. Maintaining these standards also serves to maintain the highest level of protection of Iowans. If the examination requirements were removed, there would be a loss of revenue to examination administrators who provide the CPA examinations outlined in the rules.

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

Less restrictive alternatives, including changing the education/examination requirements, would eliminate Iowa's "substantial equivalency" status with 54 other jurisdictions across the country and beyond. As a result, Iowa licensed accountants would not be allowed to easily practice in other jurisdictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
Staff held conversations with members of the Board regarding the agency's rules, but no alternatives were recommended because Iowa's criteria for licensure is in line with all jurisdictions across the country. The Board believes that a national standard is beneficial.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The Board believes that maintaining the nationally adopted standards for licensing accountants is critical to continuing to protect Iowans. It is also beneficial to licensees to practice in multiple states. Alternatives may result in an increase in the numbers of complaints and investigations. The current provisions for licensure are required by law.

Small Business Impact

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

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

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

CPAs can work in a variety of settings, including large and small accounting firms and in-house firm environments within businesses. The rules regarding CPA and Licensed Public Accountant firms are covered in other chapters.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3 CERTIFICATION OF CPAs

193A—3.1(542) Qualifications for a certificate as a certified public accountant.

3.1(1) A person who meets the qualifications of Iowa Code section 542.5 and this chapter and applies pursuant to Iowa Code section 542.6 may be granted a certificate as a certified public accountant.

3.1(2) An application may be denied if the applicant is in violation of any of the requirements of Iowa Code chapter 542, prior enforcement proceedings under 193A—Chapter 17, or Iowa Code section 272C.15.

193A—3.2(542) Colleges or universities recognized by the board. Pursuant to Iowa Code section 542.5(7), the board recognizes educational institutions accredited by the Association to Advance Collegiate Schools of Business and the regional accrediting bodies listed by the Accredited Institutions of Postsecondary Education.

This rule is intended to implement Iowa Code section 542.5.

193A—3.3(542) Accounting concentration.

3.3(1) A candidate will be deemed to have met the educational requirement if, as part of the 150 semester hours of education as outlined in Iowa Code section 542.5, the candidate has met one of the following four conditions:

a. Earned a graduate degree with a concentration in accounting from a program that is accredited in accounting by an accrediting agency recognized by the board.

b. Earned a graduate degree in business from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting including courses covering the subjects of financial accounting, auditing, taxation, and management accounting. Such accounting hours exclude elementary accounting or principles of accounting, internships or life experience.

c. Earned a baccalaureate degree in business or accounting from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting. Such accounting hours exclude elementary accounting or principles of accounting, internships or life experience.

d. Earned a baccalaureate or higher degree and completed the following hours from an accredited institution recognized by the board:

(1) At least 24 semester hours in accounting courses above elementary accounting or principles of accounting covering the subjects of financial accounting, auditing, taxation, and management accounting, not including internships or life experience; and

(2) At least 24 additional semester hours in business-related courses, not including internships or life experience. Elementary accounting hours that do not qualify under subparagraph 3.3(1)“d”(1) above may apply toward business-related courses.

Quarter hours will be accepted in lieu of semester hours at a 3:2 ratio; that is, three quarter hours is equivalent to two semester hours. Internships and life experience hours may apply toward the total 150 hours' requirement.

3.3(2) The board will consider correspondence study and study in other schools not meeting the above requirements on an individual basis if the candidate can provide evidence that such study would be acceptable for credit by a college or university recognized by the board; provided, however, that at least 18 of the required hours in accounting and at least 16 of the required hours in business-related subjects are obtained from a college or university recognized by the board.

3.3(3) The applicant needs an official transcript of credit issued by a recognized institution sent by the institution to the board's test administrator at the time of application to confirm the college or university credits claimed.

3.3(4) Graduates of foreign colleges or universities will have their education evaluated by a foreign credentials evaluation advisory service specified by the board.

193A—3.4(542) Examination applications.

3.4(1) An individual desiring to take the certified public accountant examination as an initial candidate should apply to the board's test administrator. Only a complete application will be considered. A complete application includes a completed application form, the designated fee, and all applicable college transcripts.

3.4(2) To be eligible to apply for the examination a candidate needs to fulfill the requirements of rule 193A—3.3(542). A candidate may apply for the examination before the educational requirements are met as per Iowa Code section 542.5(9).

3.4(3) A candidate whose application is denied under subrule 3.1(2) may be denied admittance to the examination by the board.

3.4(4) A candidate may be considered as a reexamination applicant regardless of whether or not the candidate sat for the examination once initially approved. Reexamination applicants may apply to the board's test administrator.

3.4(5) A nonrefundable proctoring fee will be collected from a candidate who wishes to be proctored in Iowa.

193A—3.5(542) Content and grading of the examination.

3.5(1) The board may use the Uniform Certified Public Accountant Examination prepared by the American Institute of Certified Public Accountants or another nationally recognized organization under a plan of cooperation with the boards of all states and territories of the United States.

3.5(2) The board may also make use of the advisory grading service provided by the American Institute of Certified Public Accountants or another nationally recognized organization under a plan of cooperation with the boards of all states and territories of the United States.

193A—3.6(542) Conditional requirements.

3.6(1) Effective with the implementation of the computer-based examination, a candidate may take the test subjects individually and in any order. Except as provided in rule 193A—3.7(542), credit for any subjects passed will be valid for 30 months from the actual date initial credit is earned, without the candidate's having to attain a minimum score on any failed subject(s) and without regard to whether the candidate sat for any other subjects. The candidate needs to pass all four subjects of the examination within a rolling 30-month period that begins on the date initial credit is earned, which is calculated on the date the examination administrator provides scores to the boards, the candidate, or both. If all four subjects are not passed within the 30-month period, credit for any subject taken outside the 30-month period will expire.

3.6(2) A candidate will be deemed to have passed the examination once the candidate holds, at the same time, valid credit for passing each of the four subjects of the examination. For purposes of this rule, credit for passing a subject of the examination is valid from the actual date of the testing event for that subject, regardless of the date the candidate actually received notice of the passing score.

This rule is intended to implement Iowa Code section 542.5.

193A—3.7(542) Extension of conditional status.

3.7(1) The time limit within which a candidate needs to pass all subjects under these rules will not include any period during which the candidate was serving in the armed forces of the United States. This exception does not apply if the candidate takes an examination while so serving. The board may extend the time limit in particular instances on a case-by-case basis.

3.7(2) The time limit within which a candidate needs to pass all subjects under these rules may be extended for hardship cases, such as when the applicant for the examination is prevented from attending for such reasons as unexpected illness, verified by a medical doctor, or a death in the family, verified in writing.

3.7(3) The time limit within which a candidate needs to pass all subjects under these rules may be extended if circumstances occur which prevent the score from an examination from reaching the candidate in a reasonable period of time. Such circumstances would allow the candidate the opportunity to retake a failed subject.

193A—3.8(542) Transfer of credit from another jurisdiction. A candidate requesting transfer of grades from any other jurisdiction will be subject to the same provisions of these rules as an Iowa candidate, provided that the examination given by the licensing authority in the other state was an examination approved by the Iowa board.

193A—3.9(542) Examination procedures. At the examination, a candidate needs to provide evidence of identification and comply with the requirements of the examination administrator.

193A—3.10(542) Conduct of the examination.

3.10(1) Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of certification in Iowa, be barred from accountancy licensing and certification examinations in Iowa, or be subject to the imposition of other sanctions the board deems appropriate.

3.10(2) Individuals are subject to the conduct rules and regulations of the examination administrator.

3.10(3) Any examination candidate who wishes to appeal a decision of the board under this rule may request a contested case hearing. The request for hearing needs to be in writing, briefly describe the basis for the appeal, and be filed in the board's office within 30 days of the date of the board decision being appealed. Any hearing requested under this subrule will be governed by the rules applicable to contested case hearings under 193—Chapter 7.

193A—3.11(542) Refunding of examination fees. Examination fees will not be refunded except in hardship cases, such as when the candidate for the examination is prevented from attending for such reasons as unexpected illness, verified by a medical doctor, a death in the family, or a call to active military service, in which case 50 percent of the fee may be returned. Written documentation including evidence of the hardship will be provided to the board's test administrator.

193A—3.12(542) Experience for certificate.

3.12(1) One year of experience will consist of full- or part-time employment that extends over a period of no less than one year and no more than three years and includes no fewer than 2,000 hours of performance of services outlined in Iowa Code section 542.5(12). Experience may be gained in more than one employment situation, including an internship.

3.12(2) An applicant seeking qualification as an attest CPA will have at a minimum two years of experience as more fully described in 193A—subrule 6.3(1).

3.12(3) All experience will be verified by a licensee with direct supervisory control over the applicant or by a licensee who can attest that the experience gained by the applicant meets the requirements of Iowa Code section 542.5(12) if the applicant is not supervised by a licensee.

3.12(4) Teaching experience will be in the employment of an institution of higher education and will include teaching a minimum of 24 semester hours of accounting courses for which the course participants receive credit on an official transcript. Teaching of noncredit continuing education courses will not qualify under this rule.

193A—3.13(542) Ethics course and examination. A successful candidate will need to pass an examination covering the code of ethical conduct prior to issuance of the certificate.

193A—3.14(542) Obtaining the certificate.

3.14(1) A candidate who successfully passes the examination, completes the ethics course and examination and meets the obligations of rule 193A—3.1(542) needs to apply for the certificate on the board's website. An applicant for a certificate may be denied the certificate for reasons outlined in subrule 3.4(3) regardless of when the incident occurred.

3.14(2) If the candidate does not file an application for a certificate within three years of passing the examination, the candidate needs to comply with the basic continuing education obligations outlined in rule 193A—10.5(542) prior to filing an application. The continuing education hours need to include a minimum of eight hours of continuing education every three years devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates.

193A—3.15(542) Use of title.

3.15(1) Only a person who holds an active, unexpired certificate and who complies with the requirements of 193A—Chapters 5 and 10 or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

3.15(2) Rules regarding the use of the title "CPA" in a firm name are found in the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

These rules are intended to implement Iowa Code chapter 542 and Iowa Code section 546.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 4
“Licensure of LPAs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

This proposed chapter provides useful information to future licensees on the education, examination, and experience requirements to acquire an Iowa Licensed Public Accountant (LPA) license. It also serves to inform Iowans of the background of the individuals with whom they may be doing business.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Future licensees are impacted by this chapter because they incur the costs of a college education, plus the costs of examinations. Experience for the license is generally through paid positions.

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

Future licensees will be the primary beneficiaries from the information in Chapter 4. The general public will also benefit from knowing the criteria to become an LPA. These rules ensure a standardized baseline education, which offers protection to the public who utilizes LPA services since LPAs deal with sensitive, critical information for businesses and individuals.

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

- Quantitative description of impact:

Individuals seeking a license are required to have a college degree. The average cost of a college education is \$36,500 per year. The cost of the examination is \$240. The cost of the license is \$100. Experience for the license is generally acquired in paid positions.

- Qualitative description of impact:

The primary impact of this rulemaking is to the Iowans who utilize LPA services and are protected by the rules regarding becoming an LPA. There is an additional impact to potential licensees, who may take into account these rules when deciding a career path.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to review applications to ensure compliance with the rules of Chapter 4. The time needed to manage this provision is generally in the form of responding to questions. An Executive Officer supports the full scope of work of the Accountancy Examining Board at approximately 0.30 full-time equivalent (FTE) position, which includes answering questions from the public and licensees related to practice standards, continuing education, Board meeting administration, and more. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs of an education are paid to the schools. Costs of the examination are paid to the examination administrator. This rulemaking has no anticipated impact on state revenue.

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

Elimination of the level of education and comprehensive nature of the examinations would greatly reduce the level of knowledge and expertise of licensed accountants in Iowa. Maintaining these standards also serves to maintain the highest level of protection of Iowans.

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

The criteria to become an LPA are less than the criteria to become a Certified Public Accountant (CPA). Further changing the education/examination requirements may reduce the competency of the licensee. Intrusion is necessary in order to protect Iowans doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board. An alternative would be to discontinue the LPA option. There are approximately 80 LPAs, individuals and firms, actively licensed in Iowa.

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

Historically, conversations at the Board level have always resulted in maintaining the LPA option. Alternatives may result in a reduction of the number of professionals to serve Iowans.

Small Business Impact

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

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

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

LPAAs can work in a variety of settings, including large and small accounting firms and in-house within businesses. There are currently 16 LPA firms in Iowa. The rules for CPA and LPA firms are covered in other chapters.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
LICENSURE OF LPAAs

193A—4.1(542) Qualifications for a license as a licensed public accountant.

4.1(1) A person who meets the qualifications and applies subject to Iowa Code section 542.8 may be granted a license as a licensed public accountant.

4.1(2) An application may be denied if the applicant is in violation of any of the requirements of Iowa Code chapter 542, prior enforcement proceedings under 193A—Chapter 17, or Iowa Code section 272C.15.

193A—4.2(542) Examination application.

4.2(1) An individual desiring to take the examination to qualify for a license as a licensed public accountant should apply to the board’s test administrator.

4.2(2) To be eligible to take the examination, the applicant needs to meet the conditions of Iowa Code section 542.8(1)“b” at the time of filing the application.

4.2(3) A candidate whose application is denied under subrule 4.1(2) may be denied admittance to the examination by the board.

193A—4.3(542) Major in accounting. In determining whether the conditions in Iowa Code section 542.8(1)“b”(2) as to a “major in accounting” have been met, the board will follow the rules associated with a “concentration in accounting” outlined in rule 193A—3.3(542).

193A—4.4(542) Transcripts needed. The applicant’s claim to college or university credits needs to have an official transcript of credit issued by a recognized institution sent by the institution to the board’s test administrator at the time of application to confirm the college or university credits claimed.

193A—4.5 Reserved.

193A—4.6(542) Content and grading of the examination.

4.6(1) The board may use the examination prepared by the Accreditation Council for Accountancy and Taxation, without questions regarding auditing or attest functions.

4.6(2) The board may use the grading services provided by the Accreditation Council for Accountancy and Taxation.

4.6(3) Absent a showing of good cause, the board will accept the passing grade established by the Accreditation Council for Accountancy and Taxation.

4.6(4) Alternatively, an applicant may satisfy the examination obligations of this rule by passing the Financial Accounting and Reporting and Regulation sections of the CPA examination provided by the AICPA.

193A—4.7(542) Conditional requirements. Effective with the implementation of the computer-based examination, a candidate may take the required test subjects individually and in any order. Except as provided in rule 193A—3.7(542), credit for any subjects passed will be valid for 18 months from the actual date the candidate sat for the subject, without the candidate's having to attain a minimum score on any failed subject(s) and without regard to whether the candidate sat for any other subjects. The candidate needs to pass both subjects of the examination within a rolling 18-month period that begins on the date that the first subject is passed. If both subjects are not passed within the 18-month period, credit for any subject taken outside the 18-month period will expire.

193A—4.8(542) Examination procedures. The examination procedures to be followed by a candidate for the certified public accountants' examination as outlined in rule 193A—3.8(542) apply to a licensed public accountant examination candidate.

193A—4.9(542) Refunding of examination fees. Examination fees will not be refunded except as provided by the rules concerning the refunding of examination fees to an examination candidate for a certified public accountant certificate outlined in 193A—3.10(542).

193A—4.10(542) Credit for an examination taken in another state. A candidate who has partially passed an examination in another state will be given credit for the part or parts passed, provided the candidate meets the conditioning requirements of the board and further provided the examination given by the licensing authority in the other state was an examination that complies with rule 193A—4.7(542).

193A—4.11(542) Experience for license.

4.11(1) One year of experience will consist of full- or part-time employment that extends over a period of no less than one year and no more than three years and includes no fewer than 2,000 hours of performance of services outlined in Iowa Code section 542.8(8). Experience may be gained in more than one employment situation, including an internship.

4.11(2) All experience will be verified by a licensee with direct supervisory control over the applicant or by a licensee who can attest that the experience gained by the applicant meets the conditions of subrule 4.12(1) if the applicant is not supervised by a licensee.

4.11(3) Teaching experience needs to be in the employment of an institution of higher education and needs to include teaching a minimum of 24 semester hours of accounting courses for which the course participants will receive credit on an official transcript. Teaching of noncredit continuing education courses will not qualify under this rule.

193A—4.12(542) Ethics course and examination. A successful candidate will need to pass an examination covering the code of ethical conduct prior to issuance of the license.

193A—4.13(542) Statements on standards for accounting and review services (SSARS) education. An LPA license applicant needs to complete a minimum of eight hours of continuing education devoted to statements on standards for accounting and review services (SSARS) prior to issuance of the license.

193A—4.14(542) Obtaining the license. A candidate who successfully passes the examination and completes conditions outlined in rules 193A—4.12(542), 193A—4.13(542) and 193A—4.14(542) may apply for licensure on the board’s website. An applicant is obligated to list on the application all states in which the applicant has applied for or holds a certificate, license or permit and will also list any past denial, revocation, suspension, refusal to renew, or voluntary surrender to avoid disciplinary action of a certificate, license or permit. An applicant will notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension, refusal to renew, or voluntary surrender to avoid disciplinary action of a certificate, license or permit by another state. An applicant for licensure may be denied the license for reasons outlined in subrule 4.1(2) regardless of when the incident occurred.

193A—4.15(542) Licensure by reciprocity.

4.15(1) Iowa Code section 542.8 examination obligations will be waived for an applicant who has passed a comparable examination administered by another state if the examination was prepared and graded by the Board of Examiners of the American Institute of Certified Public Accountants or the Accreditation Council for Accountancy and Taxation.

4.15(2) A person desiring a license as a licensed public accountant in this state on the basis of a licensed public accountant license issued by another state needs to apply on the board’s website. The burden is on the applicant to obtain information satisfactory to the board that the applicant’s license in such other state is in full force and effect and that the conditions for obtaining such license were substantially equivalent to those of this state to obtain a license as a licensed public accountant.

4.15(3) An applicant needs to list on the application all states in which the applicant has applied for or holds a certificate, license or permit and needs to also list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a certificate, license, or permit. An applicant needs to notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a certificate, license or permit by another state.

4.15(4) An applicant needs to affirm that all information provided on the form is accurate. Providing false information will be considered prima facie evidence of a violation of Iowa Code chapter 542. A nonrefundable application fee will be charged to each applicant.

193A—4.16(542) Use of title. Only a person holding a license as a licensed public accountant may use or assume the title “licensed public accountant” or the abbreviation “LPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a licensed public accountant.

These rules are intended to implement Iowa Code section 542.8.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 5
“Licensure Status and Renewal of Certificates and Licenses”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@iowa.gov

Purpose and Summary

Chapter 5 provides useful information to current Iowa Certified Public Accountant (CPA)/ Licensed Public Accountant (LPA) individual licensees on status options available for a license, and what, if any, services may be offered while in a specific status. The provisions for license renewal include necessary information on due dates and processes.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licenses are impacted by this chapter because they are responsible for completing the renewal in a timely fashion and incur the costs of renewing. There is no anticipated cost to the public.

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

Licenses are the primary beneficiaries of the information in Chapter 5. Future licenses and the public may also benefit by knowing the criteria to maintain an active or inactive license.

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

- Quantitative description of impact:

Individuals seeking to renew their individual license pay \$100 per year per license for active status. For inactive status, the fee is \$50 per year, per license. There is no cost to the general public.

- Qualitative description of impact:

The primary impact of this rulemaking is to licenses who annually renew their licenses. The public benefits because at any time the public may look up a licensee to determine the license status to determine whether the person they may be doing business with is in compliance with the provisions of licensure.

3. Costs to the State:

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

The costs to the Department are for regular staff time needed to review renewal applications not eligible for automatic renewal and other administration of the process. An executive officer supports the full scope of work of the Accountancy Examining Board at approximately 0.30 of a full-time equivalent (FTE) position, which includes questions from the public and licenses such as the renewal process, continuing education, board meeting administration, etc. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Annually, the renewal of active and inactive CPA/LPA licenses generates approximately \$55,460.

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

Reducing or eliminating the annual \$100 fee would impact the cost to the licensee. The Board has not raised renewal fees in over ten years. Iowa's fees are consistent with those of other nearby jurisdictions.

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

Reducing the license fee would not impact the cost to the State to implement the renewal process. Intrusion is necessary in order to protect Iowans and visitors doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board regarding the Accountancy Examining Board[193A], but no alternatives were recommended because Iowa's criteria for licensure is in line with all jurisdictions across the country. The Board believes that a national standard is beneficial.

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

The Board believes that maintaining the standards for licensing accountants is critical to continuing to protect Iowans. Alternatives may result in an increase in the numbers of complaints and investigations.

Small Business Impact

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

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

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

Chapter 5 is specific to individuals. CPAs can work in a variety of settings including large and small accounting firms, and in-house firm environments within businesses. Chapter 5 helps ensure that firms who hire CPAs and LPAs are maintaining the highest quality of professionals. Renewal of CPA/LPA firms is covered in 193A—Chapters 7 and 8.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
LICENSURE STATUS AND RENEWAL OF CERTIFICATES AND LICENSES

193A—5.1(542) Licensure status and practice privilege.

5.1(1) Licenses issued by the board pursuant to Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule, may be in active, inactive, or lapsed status, as follows:

a. An initial license is issued in active status with an expiration date. Maintaining active status is conditioned on periodic renewal as provided in rule 193A—5.3(542). Completion of sufficient continuing education as provided in 193A—Chapter 10 is a prerequisite to renewal in active status.

b. A license may be renewed in inactive status as provided in rule 193A—5.7(272C,542) if the licensee does not satisfy the continuing education obligations for renewal in active status. A renewal license issued in inactive status lapses if not timely renewed pursuant to rule 193A—5.3(542). An inactive license may be reinstated to active status at any time pursuant to subrule 5.7(7).

c. An active or inactive license that is not timely renewed lapses. A lapsed license may be reinstated to active or inactive status at any time pursuant to subrule 5.4(3).

5.1(2) Practicing public accounting in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed license is a ground for discipline under Iowa Code section 542.10 and may also or alternatively provide grounds for the regulatory actions described in Iowa Code section 542.14.

5.1(3) Out-of-state individuals holding an inactive or lapsed Iowa CPA certificate and out-of-state individuals to whom an Iowa CPA certificate has never been issued under Iowa Code chapter 542 or prior law may exercise a practice privilege under Iowa Code section 542.20 if they hold an active CPA certificate in the jurisdiction in which they maintain their principal place of business and otherwise satisfy all of the conditions described in Iowa Code section 542.20 and 193A—Chapter 20.

5.1(4) Exercising a practice privilege in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed Iowa CPA certificate places a special burden on the individual to ensure that the public is informed about the individual’s licensure status in Iowa and in the jurisdiction of active licensure, as provided in 193A—paragraphs 20.8(2)“*b*” and 20.8(3)“*b*.” As a practical matter, an individual’s failure to clarify licensure status in Iowa and in the jurisdiction of the individual’s principal place of business may confuse the public. However, the public may consult CPAverify, a

comprehensive national data bank, to verify an individual's licensure in another jurisdiction. CPAverify may be accessed at www.cpaverify.org. A client contacting the board or consulting the board's website will be informed of the individual's licensure status in Iowa.

193A—5.2(542) Notices.

5.2(1) The board typically sends, by electronic means, a notice to licensees in the May preceding license expiration, but neither the failure of the board to send nor a licensee's failure to receive a renewal notice excuses the obligation to timely renew a license.

5.2(2) A licensee needs to notify the board within 30 days of any change of address or firm affiliation.

193A—5.3(542) Renewal procedures.

5.3(1) Licenses expire on June 30 of each year. Licensees will submit electronic online renewal application by the deadline in the renewal year. An application is deemed filed on the date of electronic renewal. An annual renewal fee will be charged.

5.3(2) Applicants for renewal are obligated to disclose on the application all background and character information requested by the board including, but not limited to:

a. All states or foreign jurisdictions in which the applicant has applied for or holds a CPA certificate or license, an LPA license, or a substantially equivalent designation from a foreign country;

b. Any past denial, revocation, suspension, or refusal to renew a CPA certificate, license or permit to practice, or LPA license, or voluntary surrender of a CPA certificate, license or permit or LPA license to resolve or avoid disciplinary action, or similar actions concerning a substantially equivalent foreign designation;

c. Any other form of discipline or other penalty imposed against a CPA certificate, license or permit, LPA license, or a substantially equivalent foreign designation, or a practice privilege;

d. The conviction of any crime; and

e. The revocation of a professional license of any kind in this or any other jurisdiction.

5.3(3) A licensee who performs compilation services for the public other than through a certified public accounting or licensed public accounting firm needs to submit a certification of completion of a peer review conducted in accordance with 193A—Chapter 11 no less often than once every three years.

5.3(4) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application needs to be:

a. Received by the board in electronic form on or before the date the license is set to expire or lapse;

b. Certified as accurate through the online renewal process;

c. Fully completed, including continuing education, if applicable; and

d. Accompanied with the proper fee. Attempted financial transactions that result in payment of anything less than the proper fee will result in application rejection.

5.3(5) The administrative processing of an application to renew an existing license does not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

5.3(6) If grounds exist to deny a timely and sufficient application to renew, the board will send written notification to the applicant by certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the licensee failed to meet the continuing education obligations. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.39(1).

5.3(7) When a licensee appears to be in violation of mandatory continuing education under 193A—Chapter 10, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.39(546,272C), offer a licensee the opportunity to renew in inactive status or to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty, depending on the

severity of the violation; establish deadlines for compliance; and may impose additional educational obligations on the licensee. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed license and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.39(1). A licensee who falsely reports continuing education to the board may be subject to additional sanctions including, when appropriate, suspension or revocation.

5.3(8) A certificate or license holder who continues to practice public accounting as a CPA or an LPA in Iowa after the certificate or license has expired may be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a licensee's application for reinstatement.

193A—5.4(542) Failure to renew.

5.4(1) A license or certificate holder who fails to renew the certificate or license by the expiration date, but does so within 30 days following its expiration date, will be assessed a penalty as provided in rule 193A—12.1(542).

5.4(2) If the holder fails to renew the certificate or license within the 30-day grace period, the certificate or license will lapse. The licensee is not authorized to practice during the period of time that the certificate or license is lapsed, including the 30-day grace period.

5.4(3) The board may reinstate a lapsed certificate or license upon the applicant's submission of an application to reinstate and completion of all of the following:

- a. Paying a penalty as provided in rule 193A—12.1(542);
- b. Paying the current renewal fee;
- c. Providing evidence of completed continuing education outlined in rule 193A—10.5(542), if the licensee wishes to reinstate to active status; and
- d. Providing a written statement outlining the professional activities of the applicant during the period in which the applicant's license was lapsed describing all services performed which constitute the practice of accounting including, but not limited to, those professional practice activities described in subrule 5.9(2). The applicant will also be obligated to state whether the applicant exercised a practice privilege in the period during which the license was lapsed and, if so, the jurisdiction of the applicant's principal place of business and status of out-of-state licensure.

5.4(4) A licensee holding a lapsed CPA certificate is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title "CPA" in Iowa or for a client with a home office in Iowa. A licensee holding a lapsed LPA license is not authorized to perform compilation services or to otherwise practice public accounting in Iowa using the title "LPA." A licensee holding a lapsed CPA certificate or LPA license may not use the title "CPA" or "LPA" in any context unless the licensee discloses that the certificate or license has lapsed. Additionally, a person holding a lapsed Iowa CPA certificate and who is actively licensed as a CPA in another jurisdiction in which the person maintains the principal place of business may be eligible to exercise a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

5.4(5) Practicing public accounting on a lapsed license is a ground for discipline. The board may find probable cause to file charges if the individual continues to offer services defined as the practice of public accounting while using the title "CPA" or "LPA" during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), individuals found to have practiced public accounting on a lapsed license will be obligated to notify clients upon such terms as the board orders.

193A—5.5(272C,542) Certificates and licenses—property of the board. Every certificate or license granted by the board will, while it remains in the possession of the holder, be preserved by the holder but always remains the property of the board. In the event that the certificate or license is revoked or suspended, or is not renewed in the manner prescribed by Iowa Code chapter 542 or 272C, the licensee will, on demand, deliver the certificate or license by the holder to the board. However, a person is entitled to retain possession of a lapsed certificate or license that has not been revoked, suspended or voluntarily

surrendered in a disciplinary action as long as the person complies with all provisions of Iowa Code sections 542.10 and 542.13. A lapsed certificate or license may be reinstated to active or inactive status at any time pursuant to subrule 5.4(3).

193A—5.6(542) Licensee’s continuing duty to report. An active or inactive licensee has a duty to notify the board in writing of the licensee’s conviction of a crime within 30 days of the date of conviction. “Conviction” is defined in Iowa Code section 542.5(2). Licensees also have a duty to notify the board in writing within 30 days of the date of any issuance, denial, revocation, or suspension of a certificate, license or permit by another state.

193A—5.7(272C,542) Inactive status.

5.7(1) General purpose. This rule establishes a procedure under which a person issued a certificate as a certified public accountant or a license as a licensed public accountant may apply to the board for licensure in inactive status. Inactive licensure under this rule is available to a certificate or license holder who is not engaged in Iowa or for a client with a home office in Iowa in any practice of public accounting. A person eligible for inactive status may, as an alternative, allow the person’s certificate or license to lapse.

5.7(2) Eligibility. A person holding a lapsed or active certificate or license that has not been revoked or suspended may apply to renew in inactive status through the online application process if the person is not engaged in the state of Iowa or for clients with a home office in Iowa in any practice regulated by the board, including:

- a. Supervising or performing any attest services, such as audits, reviews or agreed-upon procedures (which may only be performed by a CPA within a CPA firm that holds a permit to practice);
- b. Supervising or performing compilation services or otherwise issuing compilation reports (which may only be performed by a CPA or LPA); or
- c. Performing any accounting, tax, consulting, or financial or managerial advisory services for any client, business, employer, government body, or other entity while holding oneself out as a CPA or LPA, or otherwise using titles regulated by Iowa Code section 542.13.

5.7(3) Affirmation. The application form will contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa listed in subrule 5.7(2) without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to subrule 5.7(7).

5.7(4) Renewal. A person licensed in inactive status may renew the person’s certificate or license on the schedule described in rule 193A—5.1(542). Such person is exempt from the continuing education under 193A—Chapter 10 and will be charged a reduced renewal fee as provided in rule 193A—12.1(542). An inactive certificate or license lapses if not timely renewed.

5.7(5) Permitted practices. A person may, while registered as inactive, perform for a client, business, employer, government body, or other entity those accounting, tax, consulting, or financial or managerial advisory services which may lawfully be performed by a person to whom a certificate or license has never been issued as long as the person does not in connection with such services use the title “CPA” or “LPA,” or any other title regulated under Iowa law for use only by CPAs or LPAs in Iowa Code section 542.13 (with or without additional designations such as “inactive”). Regulated titles may only be used by active CPAs or LPAs who are subject to continuing education under 193A—Chapter 10 to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education. Additionally, individuals who are actively licensed as CPAs in another jurisdiction in which they maintain their principal place of business may be eligible to exercise a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

5.7(6) Unlicensed practices. A person who, while licensed in inactive status, engages in any of the practices described in subrule 5.7(2) or violates any provision of rule 193A—14.2(17A,272C,542) is subject to disciplinary action. A person in inactive status is not authorized to verify the experience of an applicant for a CPA certificate under Iowa Code section 542.5(12) or an applicant for an LPA license under Iowa Code section 542.8(8).

5.7(7) *Reinstatement to active status.* A person licensed in inactive status needs to, prior to engaging in any of the practices in Iowa listed in subrule 5.7(2) or for a client with a home office in Iowa, apply to the board to reinstate to active status. Such person will be obligated to pay the applicable renewal fee for active status, but is given credit for renewal fees previously paid for inactive status if the person applies for reinstatement at a date other than the person's regular renewal date. Such person will be obligated to demonstrate compliance with all applicable continuing education and peer review obligations. A person who has engaged in the practice of public accounting as an active licensee of another jurisdiction while licensed as inactive in Iowa will be deemed to have satisfied the continuing education obligations for reinstatement if the person demonstrates that the person has satisfied substantially equivalent continuing education in the other jurisdiction.

5.7(8) *Retired status.* A person holding an inactive license who does not reasonably expect to return to the workforce in the practice of public accounting due to bona fide retirement or disability may use the title "CPA, retired" or "LPA, retired," as applicable, in the context of non-income-producing personal activities. These designations may only be used during a period of bona fide retirement or disability.

These rules are intended to implement Iowa Code chapters 272C and 542 and section 546.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 6
“Attest and Compilation Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Attest is an additional certification above the Certified Public Accountant (CPA) “standard” license. Chapter 6 covers the functionality of attest and the additional experience necessary to request the additional certification.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost of attest certification is levied upon the licensees.
 - Classes of persons that will benefit from the proposed rulemaking:

Licenses and future licenses will benefit from the information on the experience compliance to be attest-certified. The general public will benefit by the assurance that attest-certified accountants have met an extra measure of skill and knowledge.

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

- Quantitative description of impact:

There are approximately 500 Iowa licenses who are currently attest-certified. Iowa receives five to ten attest applications per year. The fee is \$100 to be attest-certified. The attest experience for the certification is usually gained through paid employment.

- Qualitative description of impact:

Iowans who utilize attest services are protected by the provisions for attest certification. Due to the special knowledge and experience involved in financial audits and review services, the standards for attest certification are in line with the standards of the American Institute of Certified Public Accountants and Public Company Accounting Oversight Board.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to review attest certification applications. An executive officer supports the full scope of work of the Accountancy Examining Board at approximately 0.30 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

With five to ten attest certification applications per year at a fee of \$100 each, the effect on State revenues is minimal.

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

No new fees are being imposed. Reducing or eliminating the one-time certification fee would have little or no impact, due to the small number of requests for attest certification.

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

Reducing/eliminating the certification fee would not impact the cost to the State to implement the certification process. The additional experience for the attest certification helps protect Iowans. Intrusion is necessary in order to protect Iowans and visitors doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

Staff held discussions with the Board on all the rules of the Accountancy Examining Board[193A]. No alternative methods were seriously considered for Chapter 6.

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

Attest and compilation play an important role in the accounting profession. The additional experience for attest certification plays an important role in protecting Iowans by establishing a baseline of knowledge and experience for licenses providing attest services.

Small Business Impact

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

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

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

Only individuals, not firms, may be attest-certified. However, CPAs performing attest services, whether 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 or in an out-of-state CPA firm exercising a practice privilege in compliance with Iowa Code section 542.7. Offering the extra service of attest presents a potential positive impact for licensed firms.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
ATTEST AND COMPILATION SERVICES

193A—6.1(542) Who may perform attest services.

6.1(1) Only a CPA may perform audit, review, or other attest services, as defined in Iowa Code section 542.3(1).

6.1(2) Only an actively licensed attest-certified Iowa CPA or an out-of-state licensee exercising a practice privilege under Iowa Code section 542.20 may perform attest services in Iowa or for a client with a home office in Iowa. CPAs are cautioned, however, that a government body, or a client may obligate that an individual be licensed in Iowa as a condition of performing attest services in Iowa or for a client with a home office in Iowa, whether or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is a precondition, for example, to perform certain audit services described in Iowa Code chapter 11.

6.1(3) CPAs performing attest services, whether the CPAs are certified in Iowa or exercising a practice privilege, may only do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7 or in an out-of-state CPA firm exercising a practice privilege 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.

6.1(4) CPAs who are responsible for supervising attest services for a CPA firm or who sign or authorize someone to sign the accountant's report on behalf of a CPA firm are obligated to satisfy the experience or competency obligations established by nationally recognized professional standards that are applicable to the attest services performed.

193A—6.2(542) Necessary attest experience.

6.2(1) A CPA who is responsible for supervising attest services or who signs or authorizes someone to sign the accountant's report on behalf of a firm is obligated to have two years of full-time or part-time equivalent experience that extends over a period of no less than two years and includes no fewer than 4,000 hours, including at least 2,000 hours providing attest services under the supervision of one or more CPAs responsible for supervising attest services on behalf of a CPA firm that holds a permit to practice in Iowa or an equivalent form of CPA firm licensure in another jurisdiction.

6.2(2) Experience needs to include all of the following:

- a. Experience in applying a variety of attest procedures and techniques to the usual and customary financial transactions recorded in accounting records.
- b. Experience in the preparation of attest working papers covering the examination of the accounts usually found in accounting records.
- c. Experience in the planning of the program of attest work, including the selection of the procedures to be followed.
- d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the content of the accounting records.
- e. Experience in the preparation and analysis of reports and financial statements together with explanations and notes thereon.

6.2(3) Attest experience is verified by the applicant and by a CPA who supervised the applicant or, if a supervising CPA is unavailable, by a CPA or CPA firm with sufficient factual documentation to verify the applicant's attest qualification.

6.2(4) Any applicant or CPA who has been requested to submit to the board evidence of an applicant's attest experience and has refused to do so will, upon request by the board, explain in writing or in person the basis for the refusal. The board may compel any applicant or CPA who furnished the evidence of an applicant's experience to substantiate the information provided. An applicant may be compelled to appear before the board to supplement or verify evidence of experience. The board may inspect documentation relating to an applicant's claimed experience.

193A—6.3(542) Attest qualification.

6.3(1) Attest qualification is necessary before a CPA may perform attest services in Iowa or for a client with a home office in Iowa. "Attest qualification" or "attest qualified" means that the CPA has satisfied the experience obligations of rule 193A—6.2(542).

6.3(2) All CPAs who held an individual permit to practice in Iowa at any point prior to July 1, 2002, are deemed to be attest qualified. Under Iowa law prior to July 1, 2002, CPAs were only issued an individual permit to practice if they verified qualification to perform attest services. Individual permits to practice were discontinued under Iowa law effective July 1, 2002.

6.3(3) CPAs who did not hold a permit to practice prior to July 1, 2002, may attain or establish attest qualification as follows:

a. Applicants may apply for attest qualification when initially applying for a certificate as an Iowa CPA under Iowa Code section 542.6 or when applying for reciprocal Iowa certification under Iowa Code section 542.19 or any other applicable law or rule.

b. Iowa CPA certificate holders may apply for attest qualification at any time at which they are qualified to do so.

c. Out-of-state CPAs performing attest services while exercising a practice privilege under Iowa Code section 542.20 do not have to individually apply to the board for attest qualification. However, if:

(1) CPAs perform attest services in an Iowa CPA firm, the Iowa CPA firm will 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 will 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.

193A—6.4(542) Compilation services.

6.4(1) Only a CPA licensed by the board under Iowa Code section 542.6 or 542.19, or any other applicable law or rule; an LPA licensed by the board under Iowa Code section 542.8 or any other applicable law or rule; or a person exercising a practice privilege under Iowa Code section 542.20

may issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa.

6.4(2) An individual described in subrule 6.4(1) may perform compilation services through a CPA firm which holds a permit to practice under Iowa Code section 542.7, an LPA firm which holds a permit to practice under Iowa Code section 542.8, a CPA firm exercising a practice privilege under Iowa Code section 542.20, or, if both the individual and business comply with Iowa Code section 542.13(13), through any other form of business.

6.4(3) All individuals described in subrule 6.4(1) who are responsible for supervising compilation services or who will sign or authorize someone to sign the accountant's compilation report on financial statements, as such compilation services will be performed in Iowa or for a client with a home office in Iowa, are obligated to comply with the nationally recognized professional standards that are applicable to compilation services, including SSARS.

6.4(4) All individuals described in subrule 6.4(1) will satisfy peer review obligations, individually or through the peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

These rules are intended to implement Iowa Code chapter 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 7
“Certified Public Accounting Firms”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Chapter 7 offers information to acquire and maintain a Certified Public Accounting (CPA) firm license in Iowa. It also offers helpful guidance on when a CPA firm license may or may not be necessary.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost of the initial firm application is levied upon the applicant.
 - Classes of persons that will benefit from the proposed rulemaking:
The general public is the beneficiary by holding all Iowa CPA firms to the same minimum standards.

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

- Quantitative description of impact:

There is an initial fee of \$100 for the firm license with an annual renewal fee of \$100. There are approximately 500 CPA/Licensed Public Accountant (LPA) firms in Iowa.

- Qualitative description of impact:

The licensure for accounting firms in Iowa protects the public because it holds firms accountable for competency and the highest quality of business practices.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to review initial license applications. An executive officer supports the full scope of work of the Accountancy Examining Board at approximately 0.30 of a full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Board staff approves 5 to 15 initial firm applications per year, generating \$500 to \$1,500. Renewal of approximately 500 licensed firms results in approximately \$5,000 in revenues.

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

Reducing or eliminating the initial and annual \$100 fees would impact the cost to the licensee. The Board has not raised fees in over ten years. Iowa's fees are consistent with those of other nearby jurisdictions.

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

Reducing/eliminating the fees would not impact the cost to the State to implement licensure. Intrusion is necessary in order to protect Iowans and visitors doing business with these licensed firms.

6. Alternative methods considered by the agency:

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

Staff held discussions with the Board regarding all the chapters of Accountancy Examining Board[193A]. No alternative methods were seriously considered.

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

Because Iowa's licensure provisions are consistent with most other jurisdictions, no alternative methods were seriously considered. Substantially equivalent statuses for firms allow for mobility, in some cases, so that firms may practice in other states without an additional license. Firm licensure is required by Iowa Code chapter 542.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

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

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

Iowa licenses CPA and LPA firms, some of which are small businesses. The impact on licensed small businesses is necessary to protect individuals doing business with the licensed firms because it ensures consistency of quality control through the peer review process.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
CERTIFIED PUBLIC ACCOUNTING FIRMS

193A—7.1(542) When licensure is needed.

7.1(1) Except as provided in 193A—Chapter 21, a sole proprietorship, corporation, partnership, limited liability company, or any other form of organization is obligated to apply for a permit to practice as a firm of certified public accountants pursuant to Iowa Code section 542.7.

7.1(2) A firm which is not subject to subrule 7.1(1) may practice public accounting in Iowa in accordance with Iowa Code section 542.7(1)“b.”

7.1(3) Unless individual Iowa licensure is needed by a government body or a client, the public accounting services provided by a CPA firm holding an Iowa permit to practice may be performed in Iowa or for a client with a home office in Iowa by Iowa CPAs or wholly by persons exercising a practice privilege under Iowa Code section 542.20.

7.1(4) A CPA firm issued a permit to practice by the board is accountable to the board and subject to discipline by the board for the acts of its owners or other agents, pursuant to 193A—subrule 14.2(4), whether or not such persons are individually licensed by the board.

193A—7.2(542) Application process.

7.2(1) All applications are submitted through the board’s online application process. The board will only process fully completed applications accompanied by the proper fee. Each application fee is nonrefundable.

7.2(2) An initial or renewal application for a firm permit to practice may be denied:

- a. Pursuant to Iowa Code section 542.7(3)“f”;
- b. Based on the firm’s failure to comply with Iowa Code section 542.7 or a failure to sustain the simple majority of ownership obligations of Iowa Code section 542.7(3); or
- c. Based on a regulatory or disciplinary action or to the extent applicable, subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, criminal conviction described in subrules 7.3(14) and 7.3(15) against any of the firm’s licensed or unlicensed owners.

193A—7.3(542) Application contents. Applicants for a firm permit to practice will provide information requested by the board, including:

7.3(1) The lawful name of the firm.

7.3(2) The legal form and jurisdiction of the firm’s organization.

7.3(3) Contact information for the principal place of business of the firm and each Iowa office.

7.3(4) All jurisdictions in which the firm is licensed or has applied for licensure.

7.3(5) The names, licensure, and contact information for all persons responsible for supervising attest and compilation service, or responsible for the proper licensure of the firm.

7.3(6) The highest level of public accounting services offered by the firm, such as compilation or attest.

7.3(7) Evidence of satisfactory completion of the last firm peer review, when applicable.

7.3(8) Sufficient information from which the board can determine that a simple majority of owners hold a CPA certificate under Iowa Code section 542.6 or 542.19 or hold a CPA certificate in another state and are eligible to exercise a practice privilege under Iowa Code section 542.20. The board reserves the right to request at any time a full list of owners, or a targeted sublist, such as a list of those persons who perform services from an Iowa office or those who perform attest or compilation services in Iowa or for a client with a home office in Iowa.

7.3(9) The affirmation described in 193A—paragraph 6.3(3) “c.”

7.3(10) Affirmation that all CPAs who are responsible for supervising attest services for the CPA firm or who sign or authorize someone to sign the accountant’s report on behalf of the CPA firm satisfy the experience or competency standards established by nationally recognized professional standards that are applicable to the attest services performed in Iowa or for clients with a home office in Iowa.

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 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.

7.3(12) Affirmation that all nonlicensee owners are active participants in the firm or affiliated entity.

7.3(13) Affirmation that the firm and its licensed or unlicensed owners will comply with all applicable Iowa laws and rules, including rules of professional conduct, when practicing in Iowa or for a client with a home office in Iowa.

7.3(14) Details of any past denial, cancellation, revocation, suspension, refusal to renew, or voluntary surrender of a professional license of any kind, authority to practice, or practice privilege by the board or another state agency in any jurisdiction, a federal agency, or the PCAOB, regarding the firm and the firm’s current owners (e.g., partners, shareholders, or members).

7.3(15) Details of any past felony conviction or the conviction of any crime, any element of which is dishonesty or fraud, as provided in Iowa Code section 542.5(2), under the laws of any state or the United States, regarding the firm and the firm’s current owners (e.g., partners, shareholders, or members).

193A—7.4(542) Renewal procedures.

7.4(1) The permit holder will submit an electronic online renewal by the June 30 deadline each year. Applications are deemed filed on the date of electronic renewal.

7.4(2) The permit holder will list on the renewal application all states in which the applicant has applied for or holds a permit as a certified public accounting firm and list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a permit to practice or practice privilege. Renewal applications include such additional information as the board requests, including all of the information described in rule 193A—7.3(542).

7.4(3) Within the meaning of Iowa Code chapters 17A, 272C and 542, a timely and sufficient renewal application will be:

- a. Received by the board in electronic form on or before June 30;
- b. Certified as accurate through the online renewal process;
- c. Fully completed and accompanied with the proper fee. The fee will be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant’s check is returned for insufficient funds or a closed account.

193A—7.5(542) Failure to renew permit.

7.5(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, will be assessed a penalty as provided in rule 193A—12.1(542).

7.5(2) If the firm fails to renew the permit within the 30-day grace period outlined in rule 193A—7.6(542), the permit will lapse and the firm will need to reinstate in accordance with rule 193A—7.7(542). The firm is not authorized to practice during the period of time that the permit is lapsed, including the 30-day grace period.

7.5(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). A written statement outlining the firm's professional activities during the period of lapsed licensure, including a list of Iowa clients and the services performed, is also needed.

7.5(4) The board may find probable cause to file charges for unlicensed practice if the firm engaged in any activity that obligates licensure pursuant to subrule 7.1(1) during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), firms found to have practiced public accounting in violation of subrule 7.1(1) on a lapsed license will notify clients upon such terms as the board orders.

193A—7.6(542) Notice to the board. A holder of or applicant for a permit shall notify the board in writing within 30 days pursuant to Iowa Code section 542.7(6).

193A—7.7(542) Noncompliance. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action pursuant to Iowa Code section 542.7(7).

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and section 546.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 8
“Licensed Public Accounting Firms”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Chapter 8 offers information on how to acquire a Licensed Public Accounting (LPA) firm license in Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost of the initial firm application is levied upon the applicant.
 - Classes of persons that will benefit from the proposed rulemaking:
The general public is the beneficiary by holding LPA firms to the same minimum standards.

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

- Quantitative description of impact:

There is an initial fee of \$100 for the firm license with an annual renewal fee of \$100. There are approximately 15 LPA firms in Iowa.

- Qualitative description of impact:

Licensing accounting firms in Iowa protect the public and the firms are held accountable for competency and ethical business practices.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to review initial license applications. An executive officer supports the full scope of work of the Accountancy Examining Board at approximately 0.30 of a full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Board staff approve fewer than five LPA firm applications per year. The initial \$100 license fee and annual \$100 renewal fee have little impact on state revenues.

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

Reducing or eliminating the initial and annual \$100 fees would impact the cost to the licensee. The Board has not raised fees in over ten years.

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

Reducing/eliminating the fees would not impact the cost to the State to implement licensure. Intrusion is necessary in order to protect Iowans and visitors doing business with these licensed firms.

6. Alternative methods considered by the agency:

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

Staff held discussions with the Board regarding all the chapters of Accountancy Examining Board[193A]. No alternative methods were seriously considered.

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

Historically, conversations at the Board level have always resulted in maintaining the licensed public accountant firm option. Alternatives may result in a reduction of the number of licensed firms to serve Iowans.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

Iowa licenses Certified Public Accountant and LPA firms, some of which are small businesses. The impact on licensed small businesses is necessary to protect individuals doing business with the licensed firms.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
LICENSED PUBLIC ACCOUNTING FIRMS

193A—8.1(542) Initial permit to practice.

8.1(1) A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization may apply for a permit to practice under Iowa Code section 542.8.

8.1(2) The application may be completed and submitted through the online application process and provide sufficient information pursuant to Iowa Code section 542.8(12) or certificates issued by the board under Iowa Code section 542.6 or 542.19 or are eligible to practice under practice privilege pursuant to Iowa Code section 542.20, or otherwise hold a license or certificate to practice public accounting in another state. At least one owner has to be licensed under Iowa Code section 542.8.

8.1(3) The application will list the physical location and contact information for all offices within this state and the licensee in charge of each such office.

8.1(4) Fraud or deceit, by commission or omission, in obtaining a firm permit to practice is a ground for discipline, including permanent revocation of the firm’s permit to practice, the individual certificate of an Iowa LPA or CPA, or an individual’s practice privilege, as applicable to the entity or persons responsible.

8.1(5) An initial or renewal application for a firm permit to practice may be denied pursuant to Iowa Code section 542.8(12) “e.”

193A—8.2(542) Renewal procedures. The permit holder will submit an online renewal with the board by the June 30 deadline each year. Applications are deemed filed on the date of renewal.

193A—8.3(542) Failure to renew permit.

8.3(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, will be assessed a penalty of 25 percent of the annual renewal fee.

8.3(2) If the firm fails to renew the permit within the 30-day grace period outlined in subrule 8.3(1), the permit will lapse and the firm may then reinstate in accordance with subrule 8.3(3). The firm is not authorized to practice as an LPA firm during the period of time that the permit is lapsed, including the 30-day grace period.

8.3(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). A written statement outlining the firm’s professional activities during the period of lapsed licensure is needed in this context.

8.3(4) The board may find probable cause to file charges for unlicensed practice if the firm continues to offer services defined as the practice of accounting while using the title “LPAs” or “LPA firm” during the period of lapsed licensure.

193A—8.4(542) Notice to the board. A holder of or an applicant for a permit will notify the board in writing within 30 days in compliance with Iowa Code section 542.8(15).

193A—8.5(542) Noncompliance. A firm which, after receiving or renewing a permit, is not in compliance with Iowa Code section 542.8 as a result of a change in firm ownership or personnel will take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board will result in the suspension or revocation of the firm permit.

193A—8.6(542) Peer review obligations. Firm peer review is necessary pursuant to Iowa Code section 542.7(8).

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 9
“Reciprocity and Substantial Equivalency”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Chapter 9 provides useful information on substantial equivalency and license by reciprocity. These paths streamline the process for those seeking licensure in other jurisdictions.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost of licensure is levied upon the licensees.
 - Classes of persons that will benefit from the proposed rulemaking:

Licenseses from other jurisdictions will benefit from a streamlined process to become licensed in Iowa. Iowans will benefit from an increased number of qualified professionals with whom to do business.

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

- Quantitative description of impact:

There is an initial fee of \$100 for the license with an annual renewal fee of \$100.

- Qualitative description of impact:

The primary impact is to Certified Public Accountants (CPAs) from other jurisdictions seeking licensure in Iowa. The minimal steps include documenting active licensure in another jurisdiction and paying the application fee.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to review applications. An executive officer supports the full scope of work of the Accountancy Examining Board at approximately 0.30 of a full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Annually, Iowa licenses approximately 160 CPA individuals via reciprocity. The application fee is \$100 for a total of approximately \$16,000 per year. The effect on state revenues is minimal.

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

Eliminating the reciprocity option would not significantly impact the revenues to the agency; however, it would reduce the paths to licensure in Iowa. There would be fewer qualified professionals offering services to Iowans.

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

Reducing/eliminating costs would be a benefit to the applicant but it would hold them to a different standard than other applicants seeking the same license. Intrusion is necessary in order to treat all applicants equally and to protect Iowans and visitors doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

Staff held discussions with the Board regarding all chapters of Accountancy Examining Board[193A]. Reciprocity is a path to licensure offered nationwide. No alternative methods were seriously considered.

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

Licensure by reciprocity is a standard nationwide.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

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

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

Iowa does not offer license by reciprocity for accountancy firms. There is little or no impact to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
RECIPROCITY AND SUBSTANTIAL EQUIVALENCY

193A—9.1(542) Iowa CPA certificate necessary. A person who holds a certificate or license to practice as a CPA in another state or a substantially equivalent designation from a foreign jurisdiction may apply to the board for an Iowa CPA certificate and has to do so if the person plans to establish the person’s principal place of business as a CPA in Iowa.

193A—9.2(542) Application forms. Application forms may only be completed and submitted through the online application process. An applicant will attest that all information provided on the form is true and accurate. An application may be denied based on a false statement of material fact. A nonrefundable fee will be charged to each applicant as provided in 193A—Chapter 12.

193A—9.3(542) Background and character.

9.3(1) An applicant for a CPA certificate under this chapter will disclose on the application all background and character information requested by the board including, but not limited to:

- a. All states or foreign jurisdictions in which the applicant has applied for or holds a CPA certificate or license, or a substantially equivalent designation from a foreign country;
- b. Any past denial, revocation, suspension, or refusal to renew a CPA certificate, license or permit to practice, or voluntary surrender of a CPA certificate, license or permit to resolve or avoid disciplinary action, or similar actions concerning a substantially equivalent foreign designation;
- c. Any other form of discipline imposed against the holder of a CPA certificate, license or permit, or a substantially equivalent foreign designation;
- d. The conviction of any felony or any crime described in Iowa Code section 542.5(2);
- e. The revocation of a professional license of any kind in this or any other jurisdiction; and
- f. Such additional information as the board may request to determine if grounds exist to deny certification under 193A—subrule 3.1(2).

9.3(2) The board may deny an application based on prior discipline imposed against the holder of a CPA certificate, license or permit, or a substantially equivalent foreign designation, or on any of the grounds listed in 193A—subrule 3.1(2).

193A—9.4(542) Verification of state licensure. An applicant holding a CPA certificate or license from another state or states will submit verification that the applicant’s CPA certificate or license is valid and in good standing in the state in which the applicant’s principal place of business is located. An applicant applying for a CPA certificate under the substantial equivalency provisions of Iowa Code section 542.19(1) “a” and paragraph 9.5(1) “a” may attach a letter of good standing to the application. Such letter of good standing will be prepared by the state in which the applicant’s principal place of business is located and be dated within six months of the date of the application. To expedite the

application process, the board will accept verification from another state's board by facsimile or email. The board reserves the right to request an original verification document directly from another state board.

193A—9.5(542) Qualifications for a CPA certificate.

9.5(1) A person who holds in good standing a valid CPA certificate or license from another state is deemed qualified for an Iowa CPA certificate if the person satisfies one of the following three conditions:

a. Substantially equivalent state. The licensing standards on education, examination and experience of the state which issued the applicant's CPA certificate or license were, at the time of licensure, comparable or superior to the education, examination and experience obligations of Iowa Code chapter 542 in effect at the time the application is filed in Iowa. The board may accept the determination of substantial equivalency made by the National Association of State Boards of Accountancy or may make an independent determination of substantial equivalency.

b. Individual substantial equivalency. The applicant's individual qualifications on education, examination and experience are comparable or superior to the education, examination and experience obligations of Iowa Code chapter 542 in effect at the time the application is filed in Iowa.

c. "Four-in-ten rule." The applicant satisfies all of the following:

(1) The applicant passed the examination necessary for issuance of the applicant's certificate or license with grades that would have been passing grades at the time in this state.

(2) The applicant has had at least four years of experience within the ten years immediately preceding the application which occurred after the applicant passed the examination upon which the CPA certificate or license was based and which in the board's opinion is substantially equivalent to the obligations set forth in Iowa Code section 542.5(12).

(3) If the applicant's CPA certificate or license was issued more than four years prior to the filing of the application in this state, the applicant has fulfilled the continuing professional education mandates as described in Iowa Code section 542.6(3) and 193A—Chapter 10.

9.5(2) A person who holds in good standing a certificate, license or designation from a foreign authority that is substantially equivalent to an Iowa CPA certificate is deemed qualified for an Iowa CPA certificate if the person satisfies all of the provisions of Iowa Code section 542.19(3). The burden is on the applicant to demonstrate that such certificate, license or foreign designation is in full force and effect and that the prerequisites for that certificate, license or foreign designation are comparable or superior to those needed for a CPA certificate in this state. Original verification from the foreign authority which issued the certificate, license or designation is needed to demonstrate that such certificate, license or designation is valid and in good standing. If the applicant cannot establish comparable or superior qualifications, the applicant will need to pass the uniform certified public accountant examination designed to test the applicant's knowledge of practice in this state and country. If the applicant is a Canadian Chartered Accountant, Australian Chartered Accountant, Ireland Chartered Accountant, Mexico Contador Público Certificado (CPC), New Zealand Chartered Accountant, Scottish Chartered Accountant, or South African Chartered Accountant, the applicant may be obligated to take the International Uniform CPA Qualification Examination (IQEX) in lieu of the uniform certified public accountant examination.

9.5(3) An applicant seeking an Iowa CPA certificate based on the provisions of 9.5(1) "b," 9.5(1) "c" or 9.5(2) will submit such supporting information on education, examination or experience as the board deems reasonable to determine whether the applicant qualifies for licensure in Iowa.

193A—9.6(542) Continuing obligations. A person issued a CPA certificate under this chapter is subject to all laws and rules governing persons holding CPA certificates issued in this state including, without limitation, those concerning continuing education, peer review, and notification of crimes and professional discipline. However, a person issued a CPA certificate under this chapter who maintains the principal place of business in a different state and who maintains in good standing a valid CPA certificate or license in that state is deemed to have satisfied the continuing education and peer review

obligations described in 193A—Chapters 10 and 11 if the person satisfies similar obligations in the state in which the principal place of business is located.

193A—9.7(542) Expedited application processing. A person applying for a CPA certificate under the substantial equivalency provisions of Iowa Code section 542.19(1)“a” often desires expedited application processing to facilitate cross-border practice. Applications by such persons are especially suitable for rapid processing given the substantially equivalent standards previously enforced in another state. Unless such application reveals grounds to deny the application under subrule 9.3(2), the board is otherwise aware of such grounds, or the application is unaccompanied by the proper fee, the board’s administrator will approve an application which qualifies under Iowa Code section 542.19(1)“a” as rapidly as feasible and deem the effective date of approval to practice in Iowa to be the date the board received the completed application with timely letter of good standing in a substantially equivalent state.

These rules are intended to implement Iowa Code section 542.19.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 10
“Continuing Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Chapter 10 sets forth continuing education requirements for individual Certified Public Accountants (CPAs)/Licensed Public Accountants (LPAs). It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the chapter, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that CPAs and LPAs maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:
The cost of continuing education is levied upon the licensees. There is no cost to the public.
 - Classes of persons that will benefit from the proposed rulemaking:
Licensees will benefit by maintaining current knowledge of advances in the profession. The public will benefit from an educated pool of professionals offering services.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
- Quantitative description of impact:
Private industry, professional associations and employers offer continuing education, so the Accountancy Examining Board does not have information on exact costs. Licensees are required to attest to at least 120 hours acquired over a three-year period. The cost to the licensee is estimated to be \$0 to \$4,200 every three years.
 - Qualitative description of impact:
Continuing education has a public safety benefit because it ensures licensed professionals are receiving a current education on standards for services offered. Continuing education is required by other jurisdictions nationwide.
3. Costs to the State:
- Implementation and enforcement costs borne by the agency or any other agency:
Costs to the agency are staff time needed to review continuing education compliance through random audits. An executive officer supports the full scope of work of this board at approximately 0.30 of a full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.
 - Anticipated effect on state revenues:
Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact to state revenues. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
- Eliminating continuing education requirements would have no cost impact but it could impact the quality of the licensed professionals offering services to the public. The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline. There would be a loss of revenue for the private industry organizations that offer these continuing education programs.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
- A less restrictive alternative would be to reduce the amount of continuing education required. Iowa's continuing education is consistent with that of neighboring jurisdictions. The cost of continuing education is not controlled by the agency.
- Intrusion is necessary in order to protect Iowans and visitors doing business with these licensed professionals.
6. Alternative methods considered by the agency:
- Description of any alternative methods that were seriously considered by the agency:
Staff held discussions with the Board on all chapters of the Accountancy Examining Board[193A]. No alternative methods were seriously considered. Iowa's continuing education is consistent with neighboring jurisdictions.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking: Continuing education is a nationwide standard.

Small Business Impact

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

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

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

There is no continuing education requirement for licensed firms. Licensed individuals employed by firms of any size are obliged to comply with the rules on continuing education.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10 CONTINUING EDUCATION

193A—10.1(542) Scope. The right to use the title “Certified Public Accountant” and “Licensed Public Accountant” is regulated in the public interest and imposes a duty on accounting professionals to maintain public confidence and current knowledge, skills, and abilities in all areas of services. CPAs and LPAs have to accept and fulfill their ethical responsibilities to the public and the profession regardless of their fields of employment.

10.1(1) The development of professional competence involves a continued commitment to learning and professional improvement. A CPA and an LPA performing professional services need to have a broad range of knowledge, skills and abilities. A program that promotes professional competence in the practice of accountancy is defined as one that refers to the process, methods, or principles of accounting or is directly related to the CPA's and LPA's employment and is above the level of the CPA's and LPA's current knowledge.

10.1(2) Acceptable subjects for continuing professional education include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including nontechnical professional skills, may be approved by the board if they maintain or improve CPAs' and LPAs' competence in their current employment.

193A—10.2(542) Definitions. The following definitions apply to the rules of this chapter.

“*Continuing professional education (CPE)*” means education that is acquired by a licensee in order to maintain, improve, or expand skills and knowledge present at initial licensure or to develop new and relevant skills and knowledge.

“*Firm meeting*” means a formally arranged gathering/assembly of staff or management groups or both to inform them of administrative matters.

“Formal program” means a structured learning activity based on clearly defined learning objectives and outcomes that articulate achievable knowledge, skills and abilities.

“In-house or on-site training” means a formally organized professional educational program sponsored by the employer.

“Live instruction” means an educational program delivered in a classroom setting or through videoconferencing whereby the instructor and student carry out essential tasks while together. Examples include distance learning and Webcasts.

“Nontechnical professional skills” means formal programs of learning which contribute to the professional competence of a certificate holder or license holder in fields of study that indirectly relate to the holder’s field of business. “Nontechnical professional skills” includes, but is not limited to, the following programs or courses:

1. Communication;
2. Interpersonal management;
3. Leadership and personal development;
4. Client and public relations;
5. Practice development;
6. Marketing;
7. Motivational and behavioral; and
8. Speed reading and memory building.

“Qualified instructor” means an individual whose training and experience adequately prepares the individual to carry out specified training assignments.

“Self-study” means a computer-generated program or written materials or exercises intended for self-study which do not include simultaneous interaction with an instructor but do include tests transmitted to the provider for review and grading.

“Technical professional skills” means formal programs of learning which contribute to the professional competence of a certificate holder or license holder in fields of study that directly relate to the holder’s field of business. “Technical professional skills” includes, but is not limited to, the following programs or courses:

1. Auditing standards or procedures;
2. Compilation and review of financial statements;
3. Financial statement preparation and disclosures;
4. Attestation standards and procedures;
5. Projection and forecast standards or procedures;
6. Accounting and auditing;
7. Management advisory services;
8. Personal financial planning;
9. Taxation;
10. Management information systems;
11. Budgeting and cost analysis;
12. Asset management;
13. Professional ethics;
14. Specialized areas of industry;
15. Human resource management;
16. Economics;
17. Business law;
18. Mathematics, statistics and quantitative applications in business;
19. Business management and organization;
20. General computer skills, computer software training, information technology planning and management;
21. Operations management, inventory, and production; and
22. Negotiation or dispute resolution.

193A—10.3(542) Applicability. Completion of continuing professional education is a condition precedent to the renewal of the certificate or license.

193A—10.4(542) Cost of continuing professional education. All costs of completing continuing professional education are the responsibility of the certificate holder or license holder wishing to maintain registration in this state.

193A—10.5(542) Basic continuing professional education.

10.5(1) Except as provided in subrules 10.5(2) to 10.5(7), an applicant for renewal will have completed 120 hours of qualifying continuing professional education during the three-year period ending on the December 31 or June 30 preceding the July 1 renewal date of the certificate or license. The following conditions apply:

a. On each renewal, a CPA or LPA self-selects December 31 or June 30 as the date by which continuing education will be completed in order to be eligible to renew the certificate or license.

b. A CPA or LPA applying to renew a certificate or license may declare a continuing education deadline of December 31 in one renewal cycle and a continuing education deadline of June 30 in a subsequent renewal cycle, and vice versa.

c. Licensees need to maintain continuing education records in a manner that corresponds with the self-selected continuing education deadline of December 31 or June 30.

d. When declaring a June 30 continuing education deadline, licensees should be cautious to ensure that the continuing education is fully completed on or prior to the date the renewal application is submitted to the board.

e. Licensees who renew with penalty during the 30-day grace period following June 30 need to declare either December 31 or June 30 as the continuing education deadline. The deadline cannot be extended beyond June 30.

10.5(2) At the first annual renewal date of July 1 that is less than 12 months from the date of filing of the initial application for the certificate or license, the certificate holder or license holder is not required to report continuing professional education.

10.5(3) At the annual renewal date of July 1 that is 12 months or more than 12 months, but less than 24 months, from the date of filing of the initial application for the certificate or license, the certificate holder or license holder will report 40 hours of continuing professional education earned in the one-year period ending December 31 or June 30 prior to the July 1 renewal date.

10.5(4) At the annual renewal date of July 1 that is 24 months or more than 24 months, but less than 36 months, from the date of filing of the initial application for the certificate or license, the certificate holder or license holder will report 80 hours of continuing professional education earned in the two-year period ending December 31 or June 30 prior to the July 1 renewal date.

10.5(5) A licensee is deemed to have completed continuing education under this rule if, for the period that the licensee is a resident of another state or district having a continuing professional education obligation, the licensee met the resident state's mandatory continuing professional education.

10.5(6) The board may make exceptions for reasons of individual hardship including health, certified by a medical doctor, military service, foreign residency, retirement, or other good cause. No exceptions may be made solely because of age. Applicants entitled to a full or partial exception under the provisions of Iowa Code section 272C.2(4) for active military service or government service outside of the United States may request an exception by submitting acceptable documentation as applicable to the exception requested. Applicants seeking an exception on other grounds of undue hardship can submit an application for waiver as provided in 193—Chapter 5.

10.5(7) Licensees who apply to reinstate a lapsed or inactive certificate or license to active status pursuant to 193A—subrule 5.6(3) or 5.9(7) need to satisfy 120 hours of continuing professional education earned in the preceding three-year period prior to the date of the application, including all mandatory education described in rule 193A—10.7(542). Once the certificate or license is reinstated, the continuing education obligations apply at each subsequent renewal. The 120-hour obligation described in this

subrule is modified as needed to incorporate the phase-in schedule for initial licensees described in subrules 10.5(2) to 10.5(4).

193A—10.6(542) Measurement standards. The following standards will be used to measure the hours of credit to be given for qualifying continuing professional education programs completed by individual applicants:

10.6(1) Credit is measured with one 50-minute period equaling one contact hour of credit. Half-hour credits may be allowed (equal to not less than 25 minutes) after the first hour of credit has been earned.

10.6(2) Only class hours or the equivalent, and not student hours devoted to preparation, will be counted.

10.6(3) Credit expressed as continuing education units (CEUs) will be counted as ten contact hours for each continuing professional education unit. (.1 CEU = 1 CPE)

10.6(4) Service as lecturer or discussion leader of continuing professional education programs will be counted to the extent that this service contributes to the applicant's professional competence.

193A—10.7(542) Mandatory education.

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 behalf of a firm will 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. The financial statement presentation continuing education has to 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) has to 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 may be claimed toward satisfaction of this subrule.

10.7(2) Every CPA certificate holder or LPA license holder needs to complete a minimum of four hours of continuing education devoted to ethics and rules of professional conduct during the three-year period ending December 31 or June 30, prior to the July 1 annual renewal date. For a course to qualify to satisfy this subrule, the course description will clearly outline the subject matter covered as professional or business ethics. If credit is to be claimed for a course covering multiple topics, a minimum of one hour as outlined in rule 193A—10.6(542), measurement standards, specifically in subrule 10.6(1), needs to be devoted to business or professional ethics. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to business or professional ethics, then only one hour may be claimed toward satisfaction of this subrule. Ethics courses, which are defined as courses dealing with regulatory and behavioral ethics, are limited to courses on the following:

- a. Professional standards;
- b. Licenses and renewals;
- c. SEC oversight;
- d. Competence;
- e. Acts discreditable;
- f. Advertising and other forms of solicitation;
- g. Independence;
- h. Integrity and objectivity;
- i. Confidential client information;
- j. Contingent fees;
- k. Commissions;
- l. Conflicts of interest;
- m. Full disclosure;
- n. Malpractice;
- o. Record retention;

- p.* Professional conduct;
- q.* Ethical practice in business;
- r.* Personal ethics;
- s.* Ethical decision making; and
- t.* Corporate ethics and risk management as these topics relate to malpractice and relate solely to the practice of certified public accounting.

193A—10.8(542) Programs that qualify and CPE limitations.

10.8(1) The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the professional competence of an individual certified or licensed in this state. It will be left to each individual certificate holder or license holder to determine the technical or nontechnical professional skills courses of study to be pursued. Thus, the auditor may study accounting and auditing, the tax practitioner may study taxes, and the management advisory services practitioner may study subjects related to such practice. Job-related continuing professional education qualifies as acceptable provided the courses selected from nontechnical professional skills contribute to the professional competence of the certificate holder or license holder.

10.8(2) Program standards have to include the following:

- a.* Learning activities based on clearly defined, relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants.
- b.* Learning activities developed in a manner consistent with the prerequisite education, experience, and advanced preparation of the participants.
- c.* Activities, materials, and delivery systems that are current, technically accurate, and effectively designed. Providers, sponsors, or contractors that are competent in the subject matter. Competence may be demonstrated through practical experience or education.
- d.* Learning programs that are reviewed by qualified persons other than those who develop the program to ensure that the program is technically accurate and current and addresses the stated learning objectives. This standard is waived for single presentations such as lectures that are given once.

10.8(3) Continuing professional education programs will qualify only if:

- a.* An outline of the program is prepared in advance and preserved.
- b.* The program is at least one hour (50-minute period) in length.
- c.* The program is conducted by a qualified instructor, discussion leader or lecturer. A qualified instructor, discussion leader or lecturer is anyone whose background, training, education or experience makes it appropriate for that person to lead a discussion on the subject matter of the particular program.
- d.* A record of attendance or certification of completion or transcript is maintained.

10.8(4) The following programs are deemed to qualify provided all other standards of this rule are met.

- a.* Professional development programs of recognized national and state accounting organizations.
- b.* Technical sessions at meetings of recognized national and state accounting organizations and their chapters.
- c.* Formally organized in-house or on-site educational programs provided by the certificate holder's or license holder's employer.
- d.* Distance learning programs or group study Webcast programs.
- e.* University or college courses meet the continuing professional education obligations of those attending.

Each semester hour is equal to 15 contact hours of credit. Each quarter hour is equal to 10 contact hours of credit.

- f.* Technical or nontechnical sessions offered by employers in business and industry, as well as firms of certified public accountants.

10.8(5) Formal correspondence and formal self-study programs contributing directly to the professional competence of an individual that obligate the licensee to register and provide evidence of satisfactory completion will be considered for credit. The amount of credit to be allowed for

correspondence and formal self-study programs (including tested study programs) will be recommended by the program sponsor and based upon appropriate “field tests” and will not exceed 50 percent of the renewal obligation. A licensee claiming credit for correspondence or formal self-study courses will obtain evidence of satisfactory completion of the course from the program sponsor. Credit will be allowed in the renewal period in which the course is completed.

10.8(6) Credit may be allowed for self-study programs on the basis of one hour of credit for each 50 minutes spent on the self-study program if the developer of such programs is approved by either the national continuing professional education registry or by the NASBA continuing education registry and the program sponsor has not designated the amount of credit to be claimed for completing the course of study. The licensee has to estimate the equivalent number of hours and justify the amount of hours claimed. The maximum credit will not exceed 50 percent of the renewal obligation. Credit will be allowed in the renewal period in which the course is completed.

10.8(7) The credit allowed an instructor, discussion leader, or speaker will be on the basis of two hours for subject preparation for each hour of teaching. Credit for teaching college or university coursework may be claimed for courses taught above the elementary accounting or principles of accounting level. Repetitious presentations will not be considered. The maximum credit for such preparation and teaching will not exceed 50 percent of the renewal period obligation.

10.8(8) Credit may be awarded for published articles and books. The amount of credit so awarded will be determined by the board. Credit may be allowed for published articles and books provided they contribute to the professional competence of the licensee. Credit for preparation of such publications may be given on a self-declaration basis up to 25 percent of the renewal period obligation. In exceptional circumstances, a licensee may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances that the licensee believes justify additional credit.

10.8(9) Credit may be allowed for the successful completion of professional examinations as detailed below. Credit is calculated at the rate of five times the length of each examination, which is presumed to include all preparation time, claimed in the calendar year of the examination, and limited to 50 percent of the total renewal obligation.

- a. Certified Management Accountant/CMA.
- b. Certified Information Systems Auditor/CISA.
- c. Certified Information Technology Professional/CITP.
- d. Certified Financial Planner/CFP.
- e. Enrolled Agent/EA.
- f. Certified Governmental Financial Manager/CGFM.
- g. Certified Government Auditing Professional/CGAP.
- h. Certified Internal Auditor/CIA.
- i. Accredited Business Valuation/ABV.
- j. Certified Financial Forensics/CFF.
- k. Certified Valuation Analyst/CVA.
- l. Certified Insolvency & Restructuring Advisor/CIRA.
- m. Forensic Certified Public Accountant/FCPA.
- n. Certified Fraud Examiner/CFE.
- o. Certified Business Analyst/CBA.
- p. Certified Trust and Financial Advisor/CTFA.
- q. Chartered Financial Analyst/CFA.
- r. Registered Representative, Series 6 and 7 and other examinations.
- s. Registered Investment Advisor/RIA.
- t. Certified Forensic Accountant/CrFA.
- u. Personal Financial Specialist/PFS.
- v. Chartered Life Underwriter/CLU.
- w. Fellow of the Society of Actuaries/FSA.
- x. Chartered Property & Casualty Underwriter/CPCU.
- y. Fellow Life Management Institute/FLMI.

z. Other similar examinations approved by the board.

10.8(10) Firm meetings for staff or management groups for the purpose of administrative and firm matters do not meet the standards set forth in subrule 10.8(1).

10.8(11) Dinner, luncheon and breakfast meetings of recognized organizations may qualify if they meet the appropriate standards and are limited to 25 percent of the total renewal obligation if the individual meeting is no more than two hours long.

10.8(12) Continuing professional education taken in nontechnical skills area as defined in rule 193A—10.2(542) is limited to 50 percent of the total renewal obligation.

10.8(13) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of and credit to be allowed for individual courses.

10.8(14) The right is specifically reserved to the board to approve or deny credit for continuing professional education claimed under these rules.

193A—10.9(542) Controls and reporting.

10.9(1) An applicant for renewal may be requested to provide, in such manner, including but not limited to the online renewal process, and at such time as set forth by the board, verification and documentation setting forth the continuing professional education in which the licensee has participated. The board may allow for attestation that the licensee has completed continuing education in lieu of providing a listing. If the applicant for renewal is requested to provide a listing of the continuing professional education completed, the documentation will include:

- a. School, firm or organization conducting the course and contact information.
- b. Location of course.
- c. Title of course or description of content.
- d. Principal instructor.
- e. Dates attended.
- f. Hours claimed.
- g. Certificate of completion.
- h. Name of participant.
- i. Course field of study.
- j. Type of instruction or delivery method.
- k. Amount of CPE recommended.
- l. Verification by CPE program sponsor representative.

Canceled checks and registration forms are NOT proof of attendance.

10.9(2) Sponsors of courses may be requested to furnish an attendance record, a certification of completion or any other information the board deems essential for administration of these continuing professional education rules.

10.9(3) The board will verify, on a test basis, information submitted by licensees. If an application for renewal is not approved, the applicant will be so notified and may be granted a period of time by the board in which to correct the deficiencies noted.

10.9(4) Primary responsibilities for documenting the continuing education compliance is with the licensee, and such documentation has to be retained for a period of three years subsequent to submission of the report claiming the credit. (Refer to 193A—subrule 14.3(1) and Iowa Code section 542.10(1) “a,” which provides for permanent revocation based on fraud or deceit in procuring a license.) Satisfaction of the obligations, including retention of attendance records, certification of completion records, and written outlines, may be accomplished as follows:

a. For courses taken for scholastic credit in accredited universities and colleges (state, community, or private) or high school districts, evidence of satisfactory completion of the course will be sufficient; for noncredit courses taken, a statement of the hours of attendance, signed by the instructor, will be obtained by the licensee.

b. For correspondence and formal independent self-study courses, written evidence or a certificate of completion from the sponsor or course provider will be obtained by the licensee.

c. In all other instances, the licensee will maintain a record of the information as listed in subrule 10.8(3).

193A—10.10(542) Grounds for discipline. A licensee or an applicant is subject to discipline, including permanent revocation, if the licensee or applicant provides false information to the board in connection with an application to renew or reinstate a certificate or license. A licensee or an applicant is also subject to discipline if the licensee or applicant is unable to document the continuing professional education hours reported to the board in connection with an audit or other request for documentation. False information of this nature will subject the licensee or applicant to discipline whether the false information was supplied intentionally or with reckless disregard for the truth or accuracy of the number of hours claimed. Licensees and applicants are accordingly cautioned to supply the board with accurate continuing professional education information.

193A—10.11(272C,542) Alternative continuing education cycles authorized.

10.11(1) Purpose. For a variety of reasons, some CPAs and LPAs may wish to complete their continuing education on a three-year cycle ending on a date other than December 31. By way of illustration, some licensees may prefer to take courses on particular substantive topics that are not always offered at the same time each year. Some licensees may wish to schedule continuing education to comply with the differing obligations of multiple jurisdictions. This rule is intended to authorize a more flexible time frame within which continuing education may be satisfied. This rule does not alter any other requirement of this chapter.

10.11(2) Declaration may vary by renewal cycle. A CPA or LPA applying to renew a certificate or license may declare a continuing education deadline of December 31 in one renewal cycle and a continuing education deadline of June 30 in a subsequent renewal cycle, and vice versa. Licensees are expected to maintain continuing education records in a manner that complies with the self-selected declaration in any particular renewal cycle.

These rules are intended to implement Iowa Code chapters 272C and 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 11
“Peer Review”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

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November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

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Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Chapter 11 covers peer review, a function to occasionally review the work of licensees for quality assurance. This quality assurance helps provide the best possible services for Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost of peer review is incurred by the licensees who, by the nature of their practice, require peer review every three years.
 - Classes of persons that will benefit from the proposed rulemaking:

Iowans requiring compilation or attest services will benefit from the knowledge that the work of their service provider is routinely reviewed for a quality assessment.

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

- Quantitative description of impact:

Costs to the Certified Public Accountant (CPA)/Licensed Public Account (LPA) individual or firm for peer review vary, based on the size of the firm, from \$250 (for an individual) to \$2,000 (for a firm of 50). For very large firms with diversified audit practices, peer review can cost approximately \$25,000. Peer review is required every three years.

- Qualitative description of impact:

Peer review plays an important role in maintaining the highest level of service to Iowans. Depending on the nature and severity of a deficient peer review report, licensees may be directed to take specific steps to improve their services.

3. Costs to the State:

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

There is no direct cost to the agency; however, the Accountancy Examining Board may, within a regular meeting, discuss the results of a peer review report.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Eliminating peer review would reduce costs to the licensees who require it. However, the Board believes there could be an impact to public welfare due to the quality control nature of peer review.

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

There is no cost implication to the Department. Intrusion is necessary in order to protect Iowans and visitors doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

Department staff discussed all chapters of [193A] with the Board. No alternative methods were considered by the Department.

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

Peer review is a standard component among accountancy boards across the country.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

Currently there are approximately 350 firms offering services that may mandate peer review every three years. Smaller firms pay a lower fee than larger firms. Peer review is a standard among licensing boards nationwide. Reducing the requirements to smaller firms jeopardizes the standard of equal treatment.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
PEER REVIEW

193A—11.1(542) Peer review obligations. As a condition of renewal for a CPA or LPA who issues compilation reports other than through a CPA or LPA firm that holds a permit to practice, and as a condition of permit renewal for LPA firms that issue compilation reports or CPA firms that provide attest services or issue compilation reports, the applicant shall submit certification of completion of a peer review issued pursuant to this chapter. Such review needs to be completed at the highest level of service provided by the firm or licensee. The performance of preparation services under SSARS 21 does not alone subject a firm or individual to peer review, although if a firm or individual is otherwise subject to peer review, the reviewer may include preparation services in the scope of practices reviewed.

193A—11.2(542) Three-year cycle. During the three-year period ending December 31 preceding the application for renewal of a certificate, license, or permit to practice, the individual licensee or firm shall have completed a peer review in accordance with this chapter. A peer review shall be completed no less often than once every three years.

193A—11.3(542) System of internal quality control. If the firm has not performed any attest or compilation services prior to the application for renewal, the firm will have in place a system of internal quality control prior to the commencement of an engagement including attest or compilation services and come into compliance with the peer review obligations within 18 months of completion of an engagement including attest or compilation services.

193A—11.4(542) Peer review programs that qualify. A firm's completion of a peer review program endorsed or supported by the AICPA, National Society of Accountants or other substantially similar review programs in Iowa or other states approved by the board satisfies this chapter.

193A—11.5(542) Waiver of peer review. At the time of renewal, a licensee or firm may request a waiver from this chapter, as provided in Iowa Code sections 542.7(9) and 542.8(18).

193A—11.6(542) Submission of peer review reports. Unless the subject of a peer review timely objects in writing to the administering entity of the peer review program, the administering entity will make available to the board within 30 days of the issuance of the peer review acceptance letter the final peer review report or such peer review records as are designated by the peer review program in which the administering entity participates. The subject of a peer review may voluntarily submit the final peer review report directly to the board.

These rules are intended to implement Iowa Code chapter 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 12
“Fees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The purpose of Chapter 12 is to provide helpful information on the fees to acquire and maintain a Certified Public Accountant (CPA)/Licensed Public Accountant (LPA) license, plus information on reinstating a lapsed license.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost to acquire and maintain a license is levied upon the licensees.
 - Classes of persons that will benefit from the proposed rulemaking:

Current and future licensees will benefit by knowing the various costs associated with a CPA/LPA license.

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

- Quantitative description of impact:

Licensing fees vary from state to state. From the data available, Iowa's licensing fees are in line with those of neighboring states.

- Qualitative description of impact:

The information in Chapter 12 captures fee information all in one place to aid individuals researching the cost to acquire and maintain a license.

3. Costs to the State:

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

The costs to the Department are for regular staff time needed to collect fees. Each business day, a ledger report is generated with updated calculations of fees collected. Staff salaries to support the work of the Accountancy Examining Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

The effect on state revenues is significant, \$600,000 to \$650,000 annually.

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

Reducing or eliminating fees would have a positive impact on licensees. Iowa has not raised any fees in over ten years, and its fees are in line with neighboring jurisdictions.

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

Reducing or eliminating fees would be less costly to the licensee. Intrusion is necessary in order to keep any fees in place.

6. Alternative methods considered by the agency:

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

Staff held discussions with the Board regarding all chapters of [193A]. No alternative methods were considered.

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

Iowa's fees are in line with those of neighboring jurisdictions.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

Iowa licenses about 500 CPA and LPA firms, some of which are small businesses. The Department does not currently collect data that would help determine the size of the business. Historically, fees have been assessed on an equal basis, regardless of the size of the firm.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
FEES

193A—12.1(542) Fees. The following is a schedule of the fees for examinations, certificates, licenses, permits and renewals adopted by the board:

| | |
|--|--|
| Initial CPA examination application: | |
| Paid directly to CPA examination services | not to exceed \$1,500 |
| Reexamination: | |
| Paid directly to CPA examination services | not to exceed \$1,500 |
| Original issuance of CPA certificate or LPA license by examination (fee includes wall certificate) | \$100 |
| Original issuance of CPA certificate by reciprocity or substantial equivalency | \$100 |
| CPA wall certificate or LPA license issued by reciprocity or substantial equivalency | \$50 |
| Replacement of lost or destroyed wall CPA certificate or LPA license | \$50 |
| Original issuance of attest qualification | \$100 |
| Annual renewal of CPA certificate or LPA license—active status | \$100 |
| Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—active status | \$25 |
| Annual renewal of CPA certificate or LPA license—inactive status | \$50 |
| Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—inactive status | \$10 |
| Original issuance of firm permit to practice | \$100 |
| Annual renewal of firm permit to practice | \$100 |
| Reinstatement of lapsed CPA certificate or LPA license | \$100 + renewal fee + \$25 per month of expired registration |
| Reinstatement of lapsed firm permit to practice | \$100 + renewal fee + \$25 per month of expired registration |
| Interstate Transfer Form | \$25 |
| License predetermination fee | \$25 |

193A—12.2(542) Reinstatement.

12.2(1) *Reinstatement of a lapsed CPA certificate or LPA license.* The fee for the reinstatement of a lapsed CPA certificate or LPA license is \$100 plus the renewal fee plus \$25 per month of expired registration up to a maximum of \$1,000.

12.2(2) *Reinstatement of lapsed firm permit to practice.* The fee for the reinstatement of a lapsed CPA or LPA firm permit to practice for applications is \$100 plus the renewal fee plus \$25 per month of expired registration up to a maximum of \$1,000.

12.2(3) *Applicants for reinstatement.* All applicants for reinstatement will be assessed the \$100 reinstatement fee. The \$25 per month penalty fee described in subrules 12.2(1) and 12.2(2) will not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active CPA certificate, LPA license, or firm permit to practice as a CPA or LPA firm is necessary in Iowa. Falsely claiming an exemption from the monthly penalty fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.

193A—12.3(542) Prorating of certain fees. Fees for the issuance of an original CPA certificate or LPA license, pursuant to rule 193A—5.3(542), or the issuance of an initial permit to practice to a CPA or LPA firm, pursuant to rule 193A—7.1(542), will not be prorated.

These rules are intended to implement Iowa Code chapter 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 13
“Rules of Professional Ethics and Conduct”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
PH: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Chapter 13 provides information in the important area of ethical conduct for licensees. This is helpful to the licensees and members of the public who may be concerned about business associations with licensees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees will bear the costs.

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

The primary beneficiaries are members of the public who are doing business with the licensees.

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

- Quantitative description of impact:

Licensees who have complaints filed against them alleging unethical conduct may incur civil penalties should the Accountancy Examining Board vote to take action. Civil penalties may not exceed \$1,000 per offense. In 2022, there were no civil penalties resulting from unethical conduct.

- Qualitative description of impact:

The impact is on licensees, who are expected to adhere to the rules. Iowans are the primary beneficiary because Chapter 13 offers protection for Iowans, which is the mission of the Board.

3. Costs to the State:

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

Staff time is needed to review complaints against licensees regarding ethics/conduct allegations and coordinate with the Board for resolution. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. In 2022, there were no civil penalties resulting from unethical conduct.

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

Since there are no fees, the primary benefit is to Iowans who are protected by these rules. To reduce or eliminate the rules would put the public at significant risk.

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

There are no cost implications. Intrusion is necessary in order to protect Iowans and visitors doing business with the licensed professionals.

6. Alternative methods considered by the agency:

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

Staff engaged the Board in discussions on all chapters of the Accountancy Examining Board[193A]. No alternative methods were considered.

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

Rules of professional ethics and conduct for licensed accountants are in place nationally. Iowa is consistent with all other licensing jurisdictions.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

The rulemaking is mostly for individuals, not firms. However, all firms, large and small, are held to the same standards for professional ethics and conduct.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
RULES OF PROFESSIONAL ETHICS AND CONDUCT

193A—13.1(542) Applicability.

13.1(1) The AICPA Code of Professional Conduct is based upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting and on the implication of professional competence inherent in the authorized use of a board-regulated title relating to the practice of public accountancy imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of professional ethics and conduct are intended to enforce where necessary, include the obligation to maintain independence of thought and action and a continued commitment to learning and professional improvement, to observe applicable generally accepted accounting principles and generally accepted auditing standards, to promote the public interest through sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all professional activities in whatever capacity performed.

13.1(2) In addition to the rules specifically enumerated herein, and only to the extent applicable to certificate holders' and licensees' respective scope of practice, all certificate holders and licensees are obligated to comply with the AICPA Code of Professional Conduct. In the event of a conflict or inconsistency between the AICPA Code of Professional Conduct and rules specifically enumerated herein, the rules specifically enumerated herein prevail.

13.1(3) The rules of professional ethics and conduct apply to all professional services performed by all CPAs and LPAs whether or not they are engaged in the practice of public accountancy, except where the wording of a rule clearly indicates that the applicability is specifically limited to the practice of public accountancy.

13.1(4) A CPA or LPA engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the board's rules of professional ethics and conduct, so long as the CPA's or LPA's conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which the CPA or LPA is practicing. However, even in such a case, if a CPA's or LPA's name is associated with financial statements in such manner as to imply that the CPA or LPA is acting as an independent public accountant and under circumstances that would entitle the reader of the financial statement to assume that United States practices are followed, the CPA or LPA will comply with applicable generally accepted engagement standards and applicable generally accepted accounting principles.

13.1(5) A CPA or LPA may be held responsible for compliance with the rules of professional ethics and conduct by all persons associated with the accountant in the practice of public accounting who are either under the accountant's supervision or are licensees, partners or shareholders in the accountant's practice.

13.1(6) CPAs and CPA firms exercising a practice privilege in Iowa or for a client with a home office in Iowa are subject to the professional standards set forth in this chapter.

13.1(7) These rules complement the grounds for discipline set out in 193A—Chapter 14.

193A—13.2(542) Rules applicable to all CPAs and LPAs.

13.2(1) *Cooperation with board inquiry.* A CPA or LPA will, when requested, respond to communications from the board within 30 days.

13.2(2) *Reporting convictions, judgments, and disciplinary actions.* In addition to any other reporting obligations in Iowa Code chapter 542 or these rules, a CPA or LPA needs to notify the board within 30 days of:

a. Imposition upon the CPA or LPA of discipline including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, or suspension, revocation or modification of a license, certificate, permit or practice rights by:

(1) The SEC, PCAOB, or IRS (by the Director of Practice); or

(2) Another state board of accountancy for cause other than failure to pay a professional fee by the due date or failure to complete continuing education obligations by another state board of accountancy; or

(3) Any other federal or state agency regarding the CPA's or LPA's conduct while rendering professional services; or

(4) Any foreign authority or credentialing body that regulates the practice of accountancy;

b. Occurrence of any matter reportable by the CPA or LPA to the PCAOB pursuant to Sarbanes-Oxley Section 102(b)(2)(f) as amended to December 29, 2022, and PCAOB rules and forms adopted pursuant thereto;

c. Any judgment, award or settlement of a civil action or arbitration proceeding in which the CPA or LPA was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms will notify the board regarding civil judgments, settlements or arbitration awards directly involving the firm's practice of public accounting in this state; or

d. Criminal charges, deferred prosecution or conviction or plea of no contest to which the CPA or LPA is a defendant if the crime is:

(1) Any felony under the laws of the United States or any state of the United States or any foreign jurisdiction; or

(2) Any crime, including a misdemeanor, if an essential element of the offense is dishonesty, deceit or fraud, as more fully described in Iowa Code section 542.5(2).

13.2(3) *Firm's duty to report.* Each firm will designate a CPA or LPA as responsible for firm licensure or office registration and responsible for reporting any matter reportable under this rule.

13.2(4) *Solicitation or disclosure of CPA examination questions and answers.* A CPA or LPA who solicits or knowingly discloses a Uniform CPA Examination question(s) or answer(s) without the written authorization of the AICPA has committed an act discreditable to the profession.

13.2(5) *Falsely reporting continuing professional education (CPE).* A CPA or LPA has committed an act discreditable to the profession when the CPA or LPA falsely reports CPE credits to the board.

193A—13.3(542) Rules applicable to CPAs and LPAs who use the titles in offering or rendering products or services to clients.

13.3(1) *Use of title.*

a. *Certified public accountant.* Only a person who holds an active, unexpired certificate and who complies with 193A—Chapter 5, Licensure Status and Renewal of Certificates and Licenses, and 193A—Chapter 10, Continuing Education, or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title “certified public accountant” or the abbreviation “CPA” or any other title, designation, word(s), letter(s), abbreviation(s), sign, card, or device indicating that such person is a certified public accountant.

b. *Licensed public accountant.* Only a person holding a license as a licensed public accountant may use or assume the title “licensed public accountant” or the abbreviation “LPA” or any other title,

designation, word(s), letter(s), abbreviation(s), sign, card, or device indicating that such person is a licensed public accountant.

13.3(2) *Forms of practice.*

a. Certified public accountant firms. A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization has to apply for a permit to practice under Iowa Code section 542.7 and these rules as a firm of certified public accountants in order to use the title “CPAs” or “CPA firm,” as more fully described in 193A—Chapter 7.

b. Licensed public accounting firms. A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization has to apply for a permit to practice under Iowa Code section 542.8 and these rules as a firm of licensed public accountants in order to use the title “LPAs” or “LPA firm,” as more fully described in 193A—Chapter 8.

13.3(3) *Acting through others.* A CPA or LPA is obligated to not allow others to carry out on the CPA’s or LPA’s behalf, either with or without compensation, acts which, if carried out by the CPA or LPA, would violate the rules of professional ethics and conduct.

193A—13.4(542) Audit, review and other attest services.

13.4(1) *Practice privilege.* All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa has to be performed through a CPA firm that holds an active Iowa firm permit to practice or through an out-of-state CPA firm exercising a practice privilege 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 mandated 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.

193A—13.5(542) Compilation.

13.5(1) *Who can perform.* Only a CPA licensed under Iowa Code section 542.6 or 542.19, or any other applicable law or rule; an LPA licensed under Iowa Code section 542.8, or any other applicable law or rule; or a CPA exercising a practice privilege under Iowa Code section 542.20 may issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa. (Refer to rule 193A—6.4(542).)

13.5(2) *Peer review.* All individuals described in 193A—subrule 6.4(1) will satisfy peer review obligations, individually or through a peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

193A—13.6(542) Rules applicable to tax practice. CPAs, LPAs, and persons who are not CPAs or LPAs may perform tax services in Iowa. The rules of professional ethics and conduct in this chapter apply to any CPA or LPA who is licensed in Iowa and to any CPA exercising a practice privilege in Iowa whenever such person informs the client or prospective client that the person is a CPA or LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards or email.

These rules are intended to implement Iowa Code chapters 272C and 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 14
“Disciplinary Authority and Grounds for Discipline”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
PH: 402.921.2210
PIN: 301 728 068#
More phone numbers: [tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Chapter 14 provides protection to Iowans because it publicly defines the Accountancy Examining Board’s disciplinary authority and grounds for which disciplinary action can be taken. This is important to both the public and to licensees because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, a licensee can be subject to discipline against a license. Iowans have the ability to submit a complaint to the Board, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs to the general public. Licensees may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

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

The primary beneficiaries are members of the public doing business with Certified Public Accountant/Licensed Public Accountant (CPA/LPA) licensees. Chapter 14 contains rules directly relating to protecting the public.

While a low number of complaints can call into question the extent to which a profession needs to be regulated, accountancy is a profession that is highly technical and complicated in nature and requires a high level of skill. Iowans rely on the accountancy profession, so the Board believes that regulation is necessary.

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

- Quantitative description of impact:

Because there is a relatively small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the cost because the complicated services offered by the accountancy profession require advanced education and training. There is a potential cost to licensees against whom disciplinary action is taken, with disciplinary fines being capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is in providing detailed information on the Board's authority and examples of what may be grounds for discipline, all of which is designed to help protect the welfare of the public. Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. Inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and coordinating investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the Board's processes. An executive officer supports the full scope of work of this Board at approximately 0.30 full-time equivalent (FTE) position. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$3,500 was paid into the General Fund by disciplinary fees assessed by the Board.

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

The Board believes that the benefits achieved justify the cost because the profession of accountancy requires an advanced education and expertise. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received 21 complaints and issued 11 public disciplinary actions. While a low number of complaints can call into question the extent to which

a profession needs to be regulated, the profession of accountancy requires an advanced education and level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative for public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive the highest quality of service from licensed professionals. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The Board's authority for disciplinary action is provided in Iowa Code chapter 542. No alternative methods were seriously considered.

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

Protecting the public is the primary mission of the Board. These rules give the Board the authority to fulfill its mission.

Small Business Impact

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

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

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

The Board has a long history of treating all licensees equally. Licensed accountancy firms are subject to discipline in the same manner as licensed individuals. To reduce the Board's authority over firms would reduce the protection to the public.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14 DISCIPLINARY AUTHORITY AND GROUNDS FOR DISCIPLINE

193A—14.1(17A,272C,542) Disciplinary authority. The board exercises disciplinary authority for the protection and well-being of those persons who rely on licensed individuals and firms for the performance of public accounting services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and

prosecute disciplinary proceedings, establish standards of professional conduct, and impose discipline, as authorized under Iowa law.

193A—14.2(17A,272C,542) Disciplinary policy.

14.2(1) The board's disciplinary policy rests upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence inherent in the authorized use of a licensee's regulated title relating to the practice of public accountancy, imposes on persons and firms engaged in such practice certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence of thought and action; to strive continuously to improve one's professional skills; to observe, where applicable, generally accepted accounting principles, generally accepted auditing standards, and similar principles and standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

14.2(2) The public interest dictates that persons professing special competence in accountancy have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles not be permitted.

14.2(3) A CPA or LPA firm is subject to discipline for its own violations of Iowa Code chapter 542 and administrative rules and the violations of the firm's CPAs, LPAs, nonlicensee owners, persons acting or purporting to act under a practice privilege, and others performing professional services on the firm's behalf. Whether a CPA or LPA firm will be charged based on the acts of such individuals will depend on the circumstances. Among the factors the board will consider are whether the firm took reasonable steps to prevent the violation, whether the violation was or could have been discovered by the firm upon reasonable inquiry, what steps the firm took upon discovering the violation, whether the acts or omissions involved licensees of the board or were committed by persons who are not individually licensed by the board, the nature of the services at issue, and whether the violations are isolated matters or more systemic to the firm's performance.

193A—14.3(17A,272C,542) Grounds for discipline. The board may initiate disciplinary action against a CPA or LPA, or a firm of CPAs or LPAs that holds an active, inactive or lapsed certificate, license or permit to practice on any of the following grounds:

14.3(1) *Fraud or deceit in procuring a license.* Fraud or deceit in procuring or attempting to procure an initial, reciprocal, renewal, or reinstated certificate, license, or permit to practice includes any intentional perversion of the truth when submitting an application to the board, or when submitting information in support of another's application to the board, including:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.

b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, continuing education certificate, or verification of peer review.

c. Failing or refusing to provide complete information in response to a question on an application.

d. Reporting information, such as satisfaction of continuing education, peer review, or attest qualification, in a false manner through overt deceit or with reckless disregard for the truth or accuracy of the information asserted.

e. Otherwise participating in any form of fraud or misrepresentation by act or omission.

14.3(2) *Professional incompetence.* Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of public accounting.

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

c. A failure to exercise the degree of care ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimum standards of acceptable and prevailing practice of public accounting in this state.

e. A willful, repeated, or material deviation from generally accepted engagement standards, generally accepted accounting standards, generally accepted auditing standards, or any other nationally recognized standard applicable to the public accounting services at issue.

f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest.

14.3(3) *Deceptive practices.* Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of public accounting.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public that is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation.

d. Falsification of business or client records.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule or 193A—Chapter 18.

f. Knowingly presenting as one's own a certificate, license, or permit to practice, or a certificate, license, or permit number, or the signature of another or of a fictitious licensee, or otherwise falsely impersonating a person holding a CPA certificate or LPA license, or a permit to practice as a firm of CPAs or LPAs.

g. Representing oneself as a CPA, LPA, CPA firm, or LPA firm when the certificate, license, or permit to practice has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed, except as allowed under Iowa Code section 542.20.

h. Fraud in representations as to skill or ability.

14.3(4) *Unethical, harmful or detrimental conduct.* Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct that are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of public accounting or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of public accounting would place the public at risk.

b. A violation of a rule of professional conduct relating to improper conflicts of interest, or lack of integrity, objectivity or independence, as provided in the AICPA Code of Professional Conduct.

c. A violation of a provision of Iowa Code section 542.13, or aiding or abetting any unlawful activity for which a civil penalty can be imposed under Iowa Code sections 542.13 and 542.14.

14.3(5) *Lack of proper qualifications.* Lack of proper qualifications includes, but is not limited to:

a. Continuing to practice as a CPA or LPA without satisfying the continuing education necessary for certificate or license renewal.

b. Continuing to perform attest services or compilation services without timely completion of peer review.

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.

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 necessary certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 or the rules of the board.

e. Habitual intoxication or addiction to the use of drugs, or impairment that adversely affects the CPA's or LPA's ability to practice in a safe and competent manner.

f. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications that are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b," or that impairs a practitioner's ability to safely and skillfully practice the profession.

14.3(6) *Negligence in the practice of public accounting.* Negligence in the practice of public accounting includes the following acts, practices, or omissions, whether or not injury results:

a. Failure or refusal without good cause to exercise reasonable diligence in the practice of public accounting.

b. A failure to exercise due care including negligent delegation of duties in the practice of public accounting.

c. Neglect of contractual or other duties to a client.

14.3(7) *Professional misconduct.* Professional misconduct includes, but is not limited to, the following:

a. Violation of a generally accepted engagement standard, generally accepted accounting standard, generally accepted auditing standard, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542), or any other violation of a provision of the AICPA Code of Professional Conduct.

b. Violation of a regulation or law of this state, another state, the United States, or the PCAOB in the practice of public accounting.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation of a licensed or unlicensed firm, individual, or other entity, or failure to fully cooperate with a disciplinary investigation of a licensee or with an investigation of firms, individuals or other entities that are not licensed by the board, including, without limitation, failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 days.

d. Revocation, suspension, or other disciplinary action taken against a licensee or person or firm exercising a practice privilege by a licensing authority of this state or another state, territory, or country. A stay by an appellate court does not negate the obligation to report such incidents to the board; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action will be vacated.

e. Suspension or revocation of the right to practice before any state or federal agency, or the PCAOB.

f. Violating Iowa Code section 542.17.

g. Violating Iowa Code section 542.18.

h. Violating or aiding and abetting another's violation of Iowa Code section 542.13 or 542.20.

i. Violating the terms of an initial agreement with the Iowa professionals review committee or violation of the terms of an impaired practitioner recovery contract with the Iowa professionals review committee.

j. Violating a practice privilege afforded to an Iowa licensee in another state.

k. Engaging in the practice of public accounting on a lapsed or inactive certificate, license or permit when the acts or practices obligate active Iowa licensure and, in the case of a firm, allowing such acts or practices by firm CPAs or LPAs.

14.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542 or any administrative rule adopted by the board in the administration or enforcement of such chapters.

14.3(9) Failure to report.

- a. Failure by a CPA firm to timely report as provided in rule 193A—7.7(542).
- b. Failure of an LPA firm to timely report as provided in rule 193A—8.5(542).
- c. Failure to timely report judgments and settlements and reportable violations by others as provided in 193A—Chapter 18.
- d. Failure to report in writing to the board any issuance, denial, revocation, or suspension of a license by another state, or the voluntary surrender of a license to resolve a pending disciplinary investigation or action, within 30 calendar days of the licensing authority's final action.
- e. Failure to report the conviction of any felony, or a crime described in Iowa Code section 542.5(2), within 30 calendar days of the conviction.
- f. Failure to report to the board a change in the licensee's physical or mailing address within 30 calendar days of the change.
- g. Failure to report as provided in 193A—subrule 13.4(3) or as otherwise required in the AICPA Code of Professional Conduct.

14.3(10) Failure to comply with board order. Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision imposing discipline.

14.3(11) Conviction of a crime. Conviction of any crime described in Iowa Code section 542.5(2) and as limited by Iowa Code section 272C.10(5) is grounds for denial, revocation, or suspension of a license. "Conviction" includes any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, withheld, not entered, or suspended, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction is vacated.

14.3(12) Conduct discreditable to the accounting profession. Conduct discreditable to the accounting profession includes any act or practice that diminishes the public's confidence in the profession, impairs the credibility of the profession, or otherwise compromises the public's trust. While it is not possible to list all conduct that is discreditable to the accounting profession, the following list provides an illustrative range of acts or practices that are implicated:

- a. Dishonesty in business or financial affairs, or a pattern of fiscal irresponsibility.
- b. Placement on the sex offender registry.
- c. Securities fraud or violation of the Iowa consumer fraud Act.
- d. Willful or repeated failure to timely file tax returns or other tax documents.
- e. False testimony in a court or administrative proceeding, or affidavit, or otherwise under oath.
- f. Providing false or misleading information to a financial institution or governmental body or official.
- g. Stating or implying an ability to improperly influence a government agency or official, or attempting to do so through deception, bribery or other unlawful means.
- h. Violation of a breach of fiduciary duty when acting in the capacity of a trustee, conservator, or other fiduciary, or as the professional advisor to a fiduciary.
- i. Any violation of Iowa Code chapter 542 or administrative rules that involves dishonesty, bad faith, or unethical behavior.

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and section 546.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 15
“Disciplinary Investigations”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Proposed Chapter 15 covers disciplinary investigations and highlights the Accountancy Examining Board’s process for resolving complaints against licensees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:

The primary beneficiaries are members of the public doing business with CPA/LPA licensees. Chapter 15 contains rules directly relating to protecting the public. While a low number of complaints can call into question the extent to which a profession needs to be regulated, accountancy is a profession that is highly technical and complicated in nature and requires a high level of skill. Iowans rely on the accountancy profession, so the Board believes that regulation is necessary.

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

- Quantitative description of impact:

Because there are very few complaints that require an investigation outside the scope of Board staff, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the complicated services offered by the accountancy profession require advanced education and training. There is a potential cost to licensees where disciplinary action is taken against them, with disciplinary fines being capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is providing detailed information on the Board's process to resolve complaints filed by the public. Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

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

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and coordinating investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the Board's processes. An executive officer supports the full scope of work of this Board at approximately 0.30 full-time equivalent (FTE) position. There is also a potential cost to the agency if a peer reviewer is hired as an investigator at a rate of \$345 per hour with a fee cap of \$2,250. In 2022, there were no peer reviewers/investigators hired by the Board. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The Board believes that the benefits achieved justify the low cost because the profession of accountancy requires an advanced education and expertise. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received 21 complaints and issued 11 public disciplinary actions. No outside investigators were necessary in 2022. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the profession of accountancy requires an advanced education and level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive the highest quality of service from licensed professionals. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The Board's authority for disciplinary action is provided for in Iowa Code chapter 542. No alternative methods were seriously considered.

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

Protecting the public is the primary mission of the Board. These rules give the Board the authority to fulfill its mission.

Small Business Impact

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

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

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

The Board has a long history of treating all licensees equally. Licensed accountancy firms are subject to discipline in the same manner as licensed individuals. To reduce the Board's authority over firms would reduce the protection to the public.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15 DISCIPLINARY INVESTIGATIONS

193A—15.1(17A,272C,542) Initiation of disciplinary investigations. The board may initiate a licensee disciplinary investigation upon the board's receipt of information suggesting that a licensee may have violated a law or rule enforced by the board which, if true, would constitute grounds for licensee discipline. The board may also review the publicly available work product of licensees on a general or random basis to determine whether reasonable grounds exist to initiate disciplinary proceedings or to conduct a more specific investigation.

193A—15.2(17A,272C,542) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member will abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193A—15.3(272C,542) Complaints. Written complaints may be submitted by any means and by anyone.

15.3(1) Contents of a written complaint. Written complaints may be submitted through the online complaint process. Written complaints, whether submitted on a board complaint form or in other written medium, will contain the following information:

- a. The full name, address, and telephone number of the complainant (person complaining).
- b. The full name, address, and telephone number of the respondent (licensee against whom the complaint is filed).
- c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions which the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.
- d. If known, citations to the laws or rules allegedly violated by the respondent.
- e. Evidentiary supporting documentation.
- f. Steps, if any, taken by the complainant to resolve the dispute with the respondent prior to filing a complaint.

15.3(2) Immunity. As provided by Iowa Code section 272C.8, a person is not civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor may an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

15.3(3) Role of complainant. The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding that may be initiated by the board.

15.3(4) Role of the board. The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

15.3(5) Initial complaint review. All written complaints received by the board are initially reviewed by the board's administrator to determine whether the complaint allegations fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for licensee disciplinary action. Complaints that are clearly outside the board's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous, will be referred by the board administrator to the board for closure at the next scheduled board meeting.

193A—15.4(272C,542) Case numbers. Complaint files are tracked by a case numbering system. Once a case file number is assigned to a complaint, all persons communicating with the board regarding that complaint are encouraged to include the case file number to facilitate accurate records and prompt response.

193A—15.5(272C,542) Confidentiality of complaint and investigative information.

15.5(1) General provisions. All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code section 272C.6(4). Such information will not be released to any person except as provided in that section and this rule.

15.5(2) Confidentiality of PCAOB information and records.

a. The PCAOB was created by the Sarbanes-Oxley Act of 2002 (the Act) as a nonprofit corporation under the laws of the District of Columbia. The duties of the PCAOB include the registration of public accounting firms that prepare audit reports for public companies; the promulgation of rules (as approved by the SEC) for auditing, quality control, ethics, independence and other standards relating to the preparation of audit reports; the inspection of registered public accounting firms; the investigation of alleged standards violations; and the imposition of appropriate sanctions following disciplinary proceedings.

b. Pursuant to Section 105(b)(5)(A) of the Act and PCAOB rules, PCAOB investigatory information and records are confidential and privileged, and exempt from disclosure under the federal Freedom of Information Act. PCAOB, in its discretion, may share such information and records, along with the nonpublic sections of inspection reports, with state regulatory authorities as necessary to accomplish the purposes of the Act or to protect investors. As provided in Section 105(b)(5)(B) of the Act, state regulatory authorities also maintain such information and records as confidential and privileged, and the board will maintain that information as confidential.

15.5(3) Disclosure to the subject of the investigation.

a. *Legal authority.* Pursuant to Iowa Code section 546.10(9), the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. *General rule.* As a matter of general policy, the board will not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. *Exceptions to general rule.* The board may exercise its discretion to release information to a licensee that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee and prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review or investigative report or expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including investigations initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may release information from a peer review or consultant's report when the soliciting of the licensee's position will aid in making the probable cause determination, and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

193A—15.6(17A,272C,542) Subpoena authority. Pursuant to Iowa Code subsections 17A.13(1), 272C.6(3) and 542.11(1), the board is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision of whether to initiate a disciplinary proceeding. Board procedures concerning investigative subpoenas are set forth in 193—Chapter 6.

193A—15.7(17A,272C,542) Informal discussion. If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

15.7(1) An informal discussion is intended to provide a licensee an opportunity to share the licensee's side of a complaint in an informal setting before the board determines whether probable cause exists to initiate a disciplinary proceeding. A licensee may attend an informal discussion but is not compelled to do so. Because disciplinary investigations are confidential, a licensee is not permitted to bring persons other than legal counsel to an informal discussion. Where an allegation is made against a firm, the firm may be represented by a managing partner, member or other firm representative.

15.7(2) Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer

review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, a licensee who desires to attend an informal discussion waives the right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. A licensee would not be waiving the right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

15.7(3) Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

15.7(4) The board may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges is filed simultaneously with the consent order, as provided in rule 193—7.4(17A,272C).

193A—15.8(17A,272C,542) Closing complaint files.

15.8(1) *Grounds for closing.* The board may close a complaint file, with or without prior investigation. Given the broad scope of matters members of the public may complain about, it is not possible to catalog all possible reasons why the board may close a complaint file.

15.8(2) *Closing orders.* The board's administrator may enter an order stating the basis for the board's decision to close a complaint file. If entered, the order will not contain the identity of the complainant or the respondent and will not disclose confidential complaint or investigative information.

If entered, a closing order will be indexed by case number and is a public record pursuant to Iowa Code section 17.3(1)“d.” A copy of the order may be mailed to the complainant, if any, and to the respondent. The board's decision whether or not to pursue an investigation, to institute disciplinary proceedings, or to close a file is not subject to judicial review.

15.8(3) *Cautionary letters.* The board may issue a confidential letter of caution to a licensee when a complaint file is closed that informally cautions or educates the licensee about matters that could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

15.8(4) *Reopening closed complaint files.* The board may reopen a closed complaint file if additional information arises after closure that provides a basis to reassess the merits of the initial complaint.

These rules are intended to implement Iowa Code chapters 17A, 272C and 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 16
“Disciplinary Proceedings”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Proposed Chapter 16 provides protection to Iowans because it publicly outlines the Accountancy Examining Board’s process for disciplinary proceedings. This is important to both the public and to the licensee because it creates a shared understanding of expectations regarding disciplinary matters. When professional standards are not met, licensees can be subject to discipline against their license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs to the general public. Licensees may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

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

The primary beneficiaries are members of the public doing business with Certified Public Accountant (CPA)/Licensed Public Accountant (LPA) licensees. Chapter 16 contains rules directly relating to protecting the public. While a low number of complaints can call into question the extent to which a profession needs to be regulated, accountancy is a profession that is highly technical and complicated in nature and requires a high level of skill. Iowans rely on the accountancy profession, so the Board believes that regulation is necessary.

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

- Quantitative description of impact:

Because there is a relatively small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the complicated services offered by the accountancy profession require advanced education and training. There is a potential cost to licensees when disciplinary action is taken against them, with disciplinary fines being capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is providing detailed information on the Board's authority and examples of what may be grounds for discipline, all designed to help protect the welfare of the public. Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

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

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and coordinating investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the Board's processes. An executive officer supports the full scope of work of this Board at approximately 0.30 full-time equivalent (FTE) position. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$3,500 was paid into the General Fund from disciplinary fees assessed by the Board.

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

The Board believes that the benefits achieved justify the low cost because the profession of accountancy requires an advanced education and expertise. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received 21 complaints

and issued 11 public disciplinary actions. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the profession of accountancy requires an advanced education and level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative for public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive the highest quality of service from licensed professionals. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The Board's authority for disciplinary action is provided for in Iowa Code chapter 542. No alternative methods were seriously considered.

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

Protecting the public is the primary mission of the Board. These rules give the Board the authority to fulfill its mission.

Small Business Impact

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

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

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

The Board has a long history of treating all licensees equally. Licensed accountancy firms are subject to discipline in the same manner as licensed individuals. To reduce the Board's authority over firms would reduce the protection to the public.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16 DISCIPLINARY PROCEEDINGS

193A—16.1(17A,272C,542) Initiation of disciplinary proceedings. Disciplinary proceedings may be initiated only by the affirmative vote of a majority of a quorum of the board at a public meeting. Board members who are disqualified will be excluded in determining whether a quorum exists. If, for example, two members of the board are disqualified, four members of the board constitutes a quorum of the remaining six board members for purposes of voting on the case in which the two members are

disqualified. When three or more members of the board are disqualified or otherwise unavailable for any reason, the administrator may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11(5).

193A—16.2(17A,272C,542) Disciplinary contested case procedures. Unless in conflict with a provision of Iowa Code chapter 542 or board rules in this chapter, all of the procedures set forth in 193—Chapter 7 apply to disciplinary contested cases initiated by the board.

193A—16.3(272C,542) Disciplinary sanctions.

16.3(1) *Type of sanctions.* The board has authority to impose the following disciplinary sanctions:

a. Revoke a license issued by the board. In the event of a revocation, the licensee is not allowed to remain a member, partner or shareholder of a business entity if the law dictates that all members, partners or shareholders of such an entity be actively involved.

b. Suspend a license issued by the board. A CPA or LPA who is under suspension will refrain, during the period of the suspension, from all facets of the ordinary practice of public accounting.

c. Revoke or suspend the privilege to engage in one or more areas of the practice of public accounting.

d. Impose a period of probation. As a condition to a period of probation, the board may impose terms and conditions deemed appropriate by the board, which may include, but are not limited to, the following:

(1) The board may order the licensee to undergo a quality review or desk review under the board's supervision. The licensee will select, subject to approval by the board, a CPA, LPA, or a firm of CPAs or LPAs. The review cost will be paid by the licensee. The board will be furnished a copy of the report issued by the reviewing party and may order remedial actions or education as a result of the report findings.

(2) The board may order the licensee to enter into an agreement with a CPA, an LPA, or a firm of CPAs or LPAs to obtain a preissuance review of any audits, compilations, or reviews issued by the licensee or other public accounting services performed during the probationary period. The agreement will be preapproved by the board. The board may order the licensee to report regularly concerning the preissuance reviews conducted pursuant to the agreement. Any cost incurred in obtaining preissuance review will be paid by the licensee.

(3) A substance abuse evaluation and such care and treatment appropriate under the circumstances.

e. Specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether that continuing education be in addition to the continuing education routinely necessary for license renewal. The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a certificate, permit, license, or registration. The board may also specify that current reference materials be obtained and maintained.

f. Obligate the licensee to undergo reexamination, using one or more parts of the CPA or LPA examination given to candidates for the CPA certificate or the LPA license.

g. Impose civil penalties pursuant to Iowa Code section 542.14(2).

h. Issue a reprimand.

i. Order the licensee to alter a professional practice or refrain from engaging in a particular act or practice in the future, notify clients of unlicensed or unprofessional conduct, or take such other remedial measures that are appropriate under the public interest and circumstances of the infraction.

j. Order such alternative discipline as is allowed by law.

16.3(2) *Imposing discipline.* Discipline may be imposed against a licensee only by the affirmative vote of a majority of the members of the board who are not disqualified.

16.3(3) *Voluntary surrender.* The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board will not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such a voluntary surrender is

considered disciplinary action and will be published in the same manner as is applicable to any other form of disciplinary order.

16.3(4) Client notification. Whenever a license is revoked, suspended, under probation, or voluntarily surrendered under this chapter, the licensee will:

a. Within 30 days of receipt of the board's final order, notify in writing all clients of the fact that the license has been revoked, suspended or voluntarily surrendered or that the licensee is under probation and the subject of compliance terms imposed by the board; for example, the licensee may agree to discontinue governmental audits while the licensee's license is under probation. Such notice will advise the client to obtain alternative professional services, unless probationary compliance terms at issue would not impact the public accounting services provided for that client;

b. Within 30 days of receipt of the board's final order, file with the board copies of the notices sent pursuant to paragraph 16.3(4) "*a.*" Compliance with this paragraph is a condition precedent for an application for reinstatement.

193A—16.4(272C,542) Notification of decisions. The board will notify NASBA of disciplinary action taken against an Iowa licensee.

193A—16.5(272C,542) Reinstatement.

16.5(1) The term "reinstatement" as used in this rule and in rule 193—7.38(17A,272C) includes the reinstatement of a suspended license, the modification or removal of a probationary limitation on a licensee's practice, the issuance of a license following the denial of an application to renew a license, and the issuance of a new license following the revocation or voluntary surrender of a license.

16.5(2) Any person whose license has been revoked, suspended or placed under probation by the board, or who has voluntarily surrendered a license to conclude a disciplinary investigation or proceeding, or whose application to renew a license has been denied may apply to the board to modify or terminate the suspension, issue or reissue the license, or modify or remove the probationary limitations of practice in accordance with Iowa Code section 542.12, rule 193—7.38(17A,272C), the provisions of this rule, and the terms of the order of revocation, suspension or probation, denial of license renewal, or acceptance of voluntary license surrender.

16.5(3) If the applicable order did not establish terms upon which the licensee may apply for reinstatement, an initial application for reinstatement may be made after at least one year has elapsed from the date of the order that revoked, suspended or placed under probation the license, denied license renewal, or accepted a voluntary surrender.

16.5(4) All proceedings for reinstatement are initiated by the respondent and subject to the procedures set forth in rule 193—7.38(17A,272C). In addition, the board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

16.5(5) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193A—16.3(272C,542).

16.5(6) The board will not grant an application for reinstatement when the initial order which revoked, suspended or placed under probation the license, denied license renewal, or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

- a.* All the terms of the sentencing or other criminal order have been fully satisfied;
- b.* The applicant has been released from confinement and any applicable probation or parole; and
- c.* Restitution has been made or is reasonably in the process of being made to any victims of the crime.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 17
“Enforcement Proceedings Against Nonlicensees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
PH: 402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

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Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Chapter 17 provides useful information on the Accountancy Examining Board’s options for resolutions of complaints against nonlicensees practicing accountancy. This is important to the public because it creates a shared understanding of options available to the Board when a nonlicensee engages in activities requiring a license. Iowans have the ability to submit a complaint to the Board, which can then investigate the allegation. The Board has the ability to seek discipline against nonlicensees for those items outlined, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs to the general public. Unlicensed individuals may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000, per public order.

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

The primary beneficiaries are members of the public doing business with accountants. Chapter 17 contains rules directly relating to protecting the public. While a low number of complaints can call into question the extent to which a profession needs to be regulated, accountancy is a profession that is highly technical and complicated in nature and requires a high level of skill. Iowans rely on the accountancy profession, so the Board believes that regulation is necessary.

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

- Quantitative description of impact:

There is a potential cost to an individual against whom disciplinary action is taken, with disciplinary fines being capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is in providing detailed information on the Board's authority and examples of what may be grounds for discipline, all of which is designed to help protect the welfare of the public. Establishing minimum requirements and imposing discipline when requirements are not met ensures safety for the consumer. Inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and coordinating investigations. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the Board's processes. An executive officer supports the full scope of work of this Board at approximately 0.30 full-time equivalent (FTE) position. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$3,500 was paid into the General Fund from disciplinary fees assessed by the Board.

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

The Board believes that the benefits achieved justify the low cost because the profession of accountancy requires an advanced education and expertise. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received 21 complaints and issued 11 public disciplinary actions, but none were regarding unlicensed practice. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the profession of accountancy requires an advanced education and level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative for public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive the highest quality of service. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The Board's authority for disciplinary action is provided in Iowa Code chapter 542. No alternative methods were seriously considered.

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

Protecting the public is the primary mission of the Board. These rules give the Board the authority to fulfill its mission.

Small Business Impact

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

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

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

The Board has a long history of treating all licensees equally. Licensed accountancy firms are subject to discipline in the same manner as licensed individuals. To reduce the Board's authority over firms would reduce the protection to the public.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17 ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

193A—17.1(542) Civil penalties against nonlicensees. The board may order compliance with Iowa Code chapter 542 and board rules, revoke a practice privilege, and impose civil penalties by order against a firm, other entity, or individual that is not licensed by the board pursuant to Iowa Code chapter 542, based on the unlawful practices specified in Iowa Code sections 542.13 and 542.20. In addition to the procedures set forth in Iowa Code section 542.14, this chapter applies.

193A—17.2(17A,542) Investigations. The board is authorized by Iowa Code subsection 17A.13(1) and Iowa Code section 542.11 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations will conform to the procedures outlined in 193A—Chapter 15. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

193A—17.3(17A,542) Notice of intent to impose civil penalties. The notice of the board’s intent to issue an order to enforce compliance with Iowa Code chapter 542 and board rules and to impose a civil penalty will be served upon the nonlicensee by certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ. P. 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty, the nature of the intended order to enforce compliance with Iowa Code chapter 542 and board rules, and whether a practice privilege will be revoked.
5. Notice of the nonlicensee’s right to a hearing and the time frame in which hearing can be requested.
6. The address to send a written request for hearing.

193A—17.4(17A,542) Request for hearing.

17.4(1) Nonlicensees have 30 days to request a hearing. The 30-day time frame begins on the date the notice is mailed if served through certified mail to the last-known address, or 30 days from the date of service if service is accepted or made in accordance with Iowa R. Civ. P. 1.305. A request for hearing has to be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

17.4(2) If a request for hearing is not timely made, the board chairperson or the chairperson’s designee may issue an order imposing the civil penalty, revoking the practice privilege, and requiring compliance with Iowa Code chapter 542 and board rules, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

17.4(3) If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

17.4(4) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty, revoking the practice privilege, and requiring compliance with Iowa Code chapter 542 and board rules at any stage of the proceeding upon mutual consent of the board.

17.4(5) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Hearings are open to the public.

193A—17.5(542) “Safe harbor” language. Persons who do not hold a CPA certificate or LPA license, firms that do not hold a CPA or LPA firm permit to practice, or individuals or firms that are ineligible to exercise a practice privilege cannot use in any statement relating to the financial affairs of a person or entity language that is conventionally used by CPAs or LPAs in reports on financial statements. Pursuant to Iowa Code section 542.13(8), such persons or firms may use the following “safe harbor” language:

“I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.”

193A—17.6(542) Enforcement options. The board may also pursue other enforcement as provided in Iowa Code sections 542.14(8) through (9) and 542.15.

These rules are intended to implement Iowa Code chapters 17A and 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 18
“Licensees’ Duty to Report”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

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Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Proposed Chapter 18 covers the licensees’ duty to report. The benefit is providing the Accountancy Examining Board with information regarding actions taken against the licensee from other parties. From that, the Board can determine whether Board action is warranted.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees will bear the cost of the time and effort it takes to fulfill their responsibility of reporting to the Board, in writing, any acts or omissions as outlined in Chapter 18.

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

The primary beneficiaries are members of the public who are doing business with the licensees. Disciplinary action from other jurisdictions, felony charges, etc., could result in disciplinary action from the Board that becomes public record. The public may use this information when considering whether to do business with licensees. The licensees may be in the best position to observe and identify violations and therefore play a critical role in protecting the public.

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

- Quantitative description of impact:

There are no agency fees associated with the rules regarding a licensee's duty to report certain actions. Licensees who have complaints filed against them alleging a failure to report may incur civil penalties should the Board vote to take action. Civil penalties may not exceed \$1,000 per offense. In 2022, there were no civil penalties resulting from a failure to report.

- Qualitative description of impact:

The impact is on licensees who are expected to adhere to the rules. Iowans are the primary beneficiary because Chapter 18 offers protection for Iowans, which is the mission of the Board.

3. Costs to the State:

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

There are no agency fees associated with the rules in Chapter 18. Staff time is needed to review complaints against licensees regarding ethics/conduct allegations and to coordinate with the Board for resolution. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. In 2022, there were no civil penalties resulting from a failure to report.

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

Since there are no fees, the primary benefit is to Iowans who are protected by these rules. To reduce or eliminate the rules would put the public at significant risk.

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

There are no cost implications. Intrusion is necessary in order to protect Iowans doing business with the licensed professionals.

6. Alternative methods considered by the agency:

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

Staff engaged the Board in discussions on all chapters of [193A]. No alternative methods were considered.

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

Rules for reporting actions against a licensee are in place nationally. Iowa is consistent with all other licensing jurisdictions.

Small Business Impact

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

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

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

The proposed rulemaking is mostly for individuals and firms of all sizes. However, all firms, large and small, are held to the same standards for reportable actions.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 18 and adopt the following **new** chapter in lieu thereof:

CHAPTER 18
LICENSEES' DUTY TO REPORT

193A—18.1(272C,542) Reporting acts or omissions committed by licensees.

18.1(1) An individual or firm licensed by the board has a duty to report under Iowa Code section 272C.9(2). The failure to perform an engagement for a client in accordance with professional standards may demonstrate a lack of qualifications by a licensee or firm. These professional standards are set forth in 193A—Chapter 13.

18.1(2) When a licensee observes an act or omission referenced in subrule 18.1(1), the licensee is obligated to report the violation in writing to the board office, setting forth the name of the licensee alleged to have committed the violation and the rule(s) violated, together with a copy of all material that evidences the violation.

193A—18.2(272C,542) Reporting judgments and settlements alleging malpractice.

18.2(1) Licensees have a duty to report under Iowa Code section 272C.9(3). For the purposes of this rule, malpractice actions brought against a firm licensed by the board will be deemed to have been brought against both the firm and the firm's owners (e.g., partners, shareholders, or members) that performed the services that led to the malpractice action.

18.2(2) When a licensee is a party to an adverse judgment resulting from a professional malpractice action or is a party to a settlement of a claim resulting from an allegation of malpractice, the licensee has an obligation to file a report in writing forwarded to the board office, setting forth the name and address of the client, the date the claim was originally made, a brief description of the circumstances precipitating the claim and a copy of the judgment or settlement agreement resulting from the claim.

193A—18.3(272C,542) Timely reporting. The reports under this chapter are to be forwarded to the board within 30 days from the initial receipt of the information giving rise to the reporting obligation.

193A—18.4(272C,542) Failure to make reports. The board may initiate a disciplinary proceeding against any licensee who fails to make a timely report under this chapter.

These rules are intended to implement Iowa Code chapters 272C and 542.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 20
“Practice Privilege for Out-of-State Certified Public Accountants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Iowa licensees and licensees from other jurisdictions enjoy a practice privilege outlined in proposed Chapter 20, allowing licensees to practice in multiple states on one license. The chapter informs on the provisions of the privilege for individuals.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is no fee to the licensees associated with the practice privilege. There is also no application for staff to review, so there are no staff costs.

- Classes of persons that will benefit from the proposed rulemaking:
Active Certified Public Accountant (CPA) licensees from other jurisdictions benefit from being able to practice in Iowa, under certain circumstances, without needing an Iowa license. Iowans benefit from having a larger pool of professionals offering professional accounting services.
- 2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Since there are no fees involved, there is no cost to the State. However, the economy is positively impacted by the potential for increased business conducted by out-of- state licensees.
 - Qualitative description of impact:
The qualitative impact is primarily on out-of-state licensees, who may be encouraged to practice public accountancy in Iowa. Iowans also benefit from a larger pool of professionals with whom to do business.
- 3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no costs to the State.
 - Anticipated effect on state revenues:
Since there are no fees associated with the practice privilege, there is no impact on state revenues.
- 4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Removing the provision for the practice privilege would impact out-of-state licensees wanting to conduct business in Iowa. The practice privilege is an option offered nationwide by almost all accountancy licensing jurisdictions.
- 5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
There are little to no cost implications. Intrusion is necessary in order to offer the provisions of Chapter 20.
- 6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
Staff engaged the Accountancy Examining Board in discussion on these rules. No alternative methods were seriously considered.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The out-of-state practice privilege serves as a potential incentive for additional business to be conducted in Iowa. It is especially beneficial for licensees who live near state borders. It is a privilege offered by most accountancy licensing jurisdictions nationwide.

Small Business Impact

- If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:
- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
 - Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
 - Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

Since these rules affect the individual, there is no substantial impact on small businesses. 193A—Chapter 21 covers the practice privilege for out-of-state firms.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20

PRACTICE PRIVILEGE FOR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS

193A—20.1(542) Overview and timing. Out-of-state certified public accountants who maintain their principal place of business in a jurisdiction other than Iowa may practice public accounting in Iowa or for clients with a home office in Iowa without Iowa licensure if all of the conditions of Iowa Code section 542.20 and this chapter are satisfied.

193A—20.2(542) Out-of-state licensure status. The practice privilege described in Iowa Code section 542.20 applies to individuals who are licensed to practice as certified public accountants in the jurisdiction in which their principal place of business is located for those periods of time in which all of the following conditions are satisfied:

20.2(1) The out-of-state license is valid, in good standing, and active. The practice privilege ceases if the out-of-state license expires in the jurisdiction of the individual’s principal place of business.

20.2(2) The individual meets the criteria for substantial equivalency reciprocity, as provided in Iowa Code section 542.19(1) “a,” “b,” or “c” and rule 193A—9.5(542).

20.2(3) The license authorizes in the individual’s principal place of business all of the public accounting services the individual performs or offers to perform in Iowa or for clients with a home office in Iowa.

193A—20.3(542) When Iowa licensure may be necessary.

20.3(1) The auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client may mandate that an individual be licensed in Iowa as a condition of performing public accounting services in Iowa or for a client with a home office in Iowa, whether or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is necessary, for example, to perform certain audit services described in Iowa Code chapter 11.

20.3(2) Iowa licensure is necessary if an individual has an office in Iowa at which the individual uses the title “CPA,” unless the individual satisfies the conditions for a practice privilege and one of the following is true:

a. The Iowa office is the office of an Iowa CPA or LPA firm that holds a permit to practice under Iowa Code section 542.7 or 542.8, and the individual provides public accounting services through that firm.

b. The Iowa office is the office of a business entity that is not obligated to hold a firm permit to practice under Iowa Code section 542.7 or 542.8, and the individual provides public accounting services through that business entity.

20.3(3) Iowa licensure is necessary if an individual moves the individual’s principal place of business to Iowa and is otherwise obligated to be licensed under Iowa Code chapter 542. The board’s streamlined application process for reciprocal licensure is described in Iowa Code section 542.19 and 193A—Chapter 9.

193A—20.4(542) Individuals ineligible for a practice privilege.

20.4(1) The practice privilege described in Iowa Code section 542.20 is not applicable if:

- a.* The individual has been convicted of a felony under the laws of any jurisdiction.
- b.* The individual has been convicted of any crime under the laws of any jurisdiction if an element of the crime involves dishonesty or fraud, such as forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or similar offense, as more fully described in Iowa Code section 542.5(2).
- c.* The individual's license to practice public accounting has been suspended, revoked, or otherwise disciplined by a licensing authority in this or another state, territory, or country, for any cause other than failure to pay appropriate fees. "Disciplined" includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding in Iowa or another jurisdiction.
- d.* The individual's right to practice public accounting before any state or federal agency, or the PCAOB, has been suspended or revoked.
- e.* The individual has applied for licensure as a certified public accountant in Iowa or another jurisdiction and the application has been denied.
- f.* Civil penalties have been imposed against the individual pursuant to Iowa Code section 542.14.
- g.* The individual's authority to exercise a practice privilege has been revoked in Iowa or another jurisdiction.

20.4(2) Individuals precluded from exercising a practice privilege under this rule may apply for licensure in Iowa if otherwise qualified. The board will determine when an application is submitted whether the criminal or disciplinary history or other regulatory action provides a ground to deny licensure.

193A—20.5(542) Attest and compilation services. Individuals providing compilation services in Iowa or for a client with a home office in Iowa need to 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.

193A—20.6(542) Rights and duties.

20.6(1) Individuals who satisfy the conditions for a practice privilege may practice public accounting in Iowa or for a client with a home office in Iowa in person, or by telephone, mail, or electronic means without licensure under Iowa Code chapter 542 or notice to the board.

20.6(2) Individuals lawfully practicing public accounting under a practice privilege may use the title "CPA" as long as they do not have an office in Iowa, except as provided in subrule 20.3(2).

20.6(3) Individuals practicing public accounting in Iowa or for a client with a home office in Iowa while exercising a practice privilege are subject to all of the following provisions:

- a.* Practice privilege practitioners are not allowed to make any representation tending to falsely indicate that the individuals are licensed under Iowa Code chapter 542. Such individuals may truthfully identify themselves as licensed in any jurisdiction in which they hold a valid, active, unexpired license to practice as a certified public accountant. For example, a practice privilege practitioner could not use the title "Iowa CPA" or otherwise state or imply licensure in Iowa, but, if true, the individual could use a title such as "CPA, licensed in Texas" or "Florida CPA." Such individuals could also truthfully state that they are CPAs practicing under a practice privilege.
- b.* Practice privilege practitioners will provide, upon a client's or prospective client's request, accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.
- c.* Practice privilege practitioners will comply with all professional standards, laws, and rules that apply to licensees performing the same professional services.

20.6(4) As a condition of exercising the practice privilege provided in Iowa Code section 542.20, the individual:

a. Consents to the personal and subject matter jurisdiction and regulatory authority of the board including, but not limited to, the board's jurisdiction to revoke the practice privilege or otherwise take action under Iowa Code section 542.14 for any violation of Iowa Code chapter 542 or board rules;

b. Appoints the regulatory body of the state that issued the license in the individual's principal place of business as the agent upon whom process may be served in any action or proceeding by the board against the individual;

c. Agrees to supply the board, upon the board's request and without subpoena, such information or records licensees are similarly obligated to provide the board under Iowa Code chapter 542, including but not limited to the information described in Iowa Code section 542.20(7) "c"; and

d. Agrees to promptly cease offering or providing public accounting services in Iowa or for a client with a home office in Iowa if the license in the individual's principal place of business expires or is otherwise no longer in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

193A—20.7(542) Penalties.

20.7(1) Individuals purporting to practice public accounting under a practice privilege who are ineligible to exercise a practice privilege or who fail to satisfy the conditions for exercising a practice privilege are subject to all of the penalties that apply to unlicensed persons, including the criminal, administrative, and civil penalties described in Iowa Code sections 542.14 and 542.15.

20.7(2) If an individual acting or purporting to act under a practice privilege engages in any act or practice that does or may in the future violate Iowa Code chapter 542 or board rules, the board may take any or all of the following actions, as applicable:

a. Apply to the district court for an injunction, restraining order, or other order, pursuant to Iowa Code section 542.14(1);

b. Issue an order to require compliance with Iowa Code chapter 542 or board rules, impose a civil penalty pursuant to Iowa Code section 542.14;

c. Deny the subsequent license application of the violator or the violator's firm, pursuant to Iowa Code section 542.20(4) "a" and "b";

d. Refer the complaint or other relevant information to the jurisdiction that issued a license to the alleged violator; and

e. Take disciplinary action against the individual pursuant to Iowa Code section 542.10 if the individual holds an inactive or lapsed Iowa license.

20.7(3) Complaints filed with the board alleging violations by individuals who are not licensed by the board, including those acting or purporting to act under a practice privilege, are not confidential under Iowa Code section 272C.6(4) and will not be treated as confidential unless otherwise provided in Iowa Code chapter 22 or other applicable law.

20.7(4) Persons filing complaints with the board against individuals acting or purporting to act under a practice privilege should provide as much information as possible to assist the board in locating the individual and in determining whether the individual is licensed in any jurisdiction.

193A—20.8(542) Relationship between Iowa licensure and the exercise of a practice privilege.

20.8(1) *Active Iowa licensees.* An Iowa licensee holding an active CPA certificate is treated for all purposes as an Iowa licensee and is not subject to the provisions of Iowa Code section 542.20.

20.8(2) *Inactive Iowa licensees.* An Iowa licensee holding an inactive CPA certificate is precluded by Iowa Code section 542.6(3) and rule 193A—5.9(272C,542) from performing attest or compilation services or using the title "CPA" while performing public accounting services in Iowa or for a client with a home office in Iowa. The practice of an inactive CPA is constrained because the continuing education necessary to renew in active status does not apply to those renewing in inactive status. Some individuals holding an inactive Iowa CPA certificate may, however, hold an active CPA certificate in another jurisdiction in which they maintain their principal place of business and satisfy continuing

education obligations. Such individuals may have maintained an inactive Iowa CPA certificate solely to facilitate reinstatement to active status when active Iowa licensure is necessary in their practice. The following provisions apply to inactive Iowa licensees who may wish to exercise a practice privilege:

a. In a disciplinary investigation or proceeding in which an inactive Iowa licensee is alleged to have improperly used the title “CPA” or otherwise practiced public accounting on an inactive license, the board will consider whether the inactive licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The individual will take care to avoid public confusion about licensure status as provided in 193A—subrule 5.1(6).

c. Violations of Iowa laws or rules by an individual holding an inactive Iowa CPA certificate will be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be enforced under the provisions of Iowa Code sections 542.14 and 542.15.

20.8(3) *Lapsed Iowa licensees.* An Iowa licensee holding a lapsed Iowa CPA certificate is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title “CPA” in Iowa or for a client with a home office in Iowa. A lapsed licensee is subject to discipline for practicing on a lapsed license or representing oneself as a “CPA” in any context unless the licensee truthfully discloses that the certificate has lapsed. Some individuals holding lapsed Iowa CPA certificates may, however, hold active CPA certificates in another jurisdiction in which the individuals maintain their principal place of business. Such individuals may have intentionally allowed their Iowa CPA certificates to lapse because the individuals no longer need an active Iowa license in their practice. The following provisions apply to lapsed Iowa licensees who may wish to exercise a practice privilege:

a. In a disciplinary investigation or proceeding in which a lapsed Iowa licensee is alleged to have improperly used the title “CPA” or otherwise practiced public accounting on a lapsed license, the board will consider whether the lapsed licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The individual will take care to avoid public confusion about licensure status as provided in 193A—subrule 5.1(6).

c. Violations of Iowa laws or rules by an individual holding a lapsed Iowa CPA certificate will be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be prosecuted under the provisions of Iowa Code sections 542.14 and 542.15.

20.8(4) *Former Iowa licensees.* An individual who held an Iowa CPA certificate at one time whose Iowa CPA certificate has been revoked or surrendered in connection with a disciplinary investigation or proceeding is barred from performing attest or compilation services or using the title “CPA” whether or not such individual may otherwise qualify for a practice privilege.

a. The former Iowa licensees described in this subrule are ineligible to exercise the practice privilege described in Iowa Code section 542.20.

b. Violations of Iowa Code chapter 542 or board rules by former Iowa licensees are subject to the criminal, civil and administrative remedies described in Iowa Code sections 542.14 and 542.15, and may also be prosecuted as disciplinary proceedings under Iowa Code section 542.10 if the license remains subject to reinstatement under Iowa Code section 542.12.

These rules are intended to implement Iowa Code section 542.20.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193A—Chapter 21
“Practice Privilege for Out-of-State Certified Public Accounting Firms”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542.4(9)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542

Public Hearing

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

November 21, 2023
3:40 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Actively licensed firms from other jurisdictions enjoy a practice privilege outlined in proposed Chapter 21, allowing licensed firms to practice in multiple states on one license. The chapter informs on the provisions of the privilege for out-of-state firms practicing in Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
There is no fee to the licensees associated with the practice privilege for firms. There is also no application for staff to review, so there are no staff costs.

- Classes of persons that will benefit from the proposed rulemaking:
Actively licensed Certified Public Accounting (CPA) firms from other jurisdictions benefit from being able to practice in Iowa, under certain circumstances, without needing an Iowa license. Iowans benefit from having a larger pool of professionals offering professional accounting services.
- 2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Since there are no fees involved, there is no cost to the State. However, the economy is positively impacted by the potential for increased business conducted by out-of-state licensed firms.
 - Qualitative description of impact:
The qualitative impact is primarily on out-of-state firms that may be encouraged to practice public accountancy in Iowa. Iowans also benefit from having a larger pool of professionals with whom to do business.
- 3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no costs to the State.
 - Anticipated effect on state revenues:
Since there are no fees associated with the practice privilege, there is no impact on state revenues.
- 4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Removing the provision for the practice privilege would impact out-of-state firms wanting to conduct business in Iowa. The practice privilege is an option offered nationwide by almost all accountancy licensing jurisdictions.
- 5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
There are little or no cost implications. Intrusion is necessary in order to offer the provisions of Chapter 21.
- 6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
Staff engaged the Accountancy Examining Board in discussion on these rules. No alternative methods were seriously considered.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The out-of-state practice privilege serves as a potential incentive for additional business to be conducted in Iowa. It is especially beneficial for firms near state borders. It is a privilege offered by most accountancy licensing jurisdictions nationwide.

Small Business Impact

- If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:
- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
 - Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
 - Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

These proposed rules affect out-of-state, actively licensed public accounting firms in a positive way. Chapter 21 offers provisions for these firms to practice in Iowa without the need for an Iowa firm license. There is no cost to the firm.

Text of Proposed Rulemaking

ITEM 1. Rescind 193A—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21

PRACTICE PRIVILEGE FOR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTING FIRMS

193A—21.1(542) Overview and timing. Out-of-state certified public accounting firms that maintain their principal place of business in a jurisdiction other than Iowa may practice public accounting in Iowa or for clients with a home office in Iowa without Iowa licensure if all of the conditions of Iowa Code section 542.20 and this chapter are satisfied.

193A—21.2(542) Out-of-state licensure status. The practice privilege described in Iowa Code section 542.20 applies to certified public accounting firms that are licensed to practice as certified public accounting firms in the jurisdiction in which their principal place of business is located for those periods of time in which all of the following conditions are satisfied:

21.2(1) The out-of-state license is valid, in good standing, and active. The practice privilege ceases if the out-of-state license expires in the jurisdiction of the firm’s principal place of business.

21.2(2) The out-of-state license is substantially equivalent to a permit to practice issued under Iowa Code section 542.7.

21.2(3) The license authorizes in the firm’s principal place of business all of the public accounting services the firm performs or offers to perform in Iowa or for clients with a home office in Iowa.

21.2(4) The public accounting services offered in Iowa or for clients with a home office in Iowa that are obligated under Iowa law to be performed by a CPA are performed by a person holding a certificate issued under Iowa Code section 542.6 or 542.19, or by a person exercising a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

193A—21.3(542) When Iowa licensure may be necessary.

21.3(1) The auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client may mandate that a firm be licensed in Iowa as a condition of performing public accounting services in Iowa or for a client with a home office in Iowa, whether or not the firm may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accounting firm is necessary, for example, to perform certain audit services described in Iowa Code chapter 11.

21.3(2) Iowa licensure is necessary if 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.”

193A—21.4(542) CPA firms ineligible for a practice privilege.

21.4(1) The practice privilege described in Iowa Code section 542.20 is not applicable if:

a. The firm or any of the firm’s owners (e.g., partners, shareholders, or members) has been convicted of a felony under the laws of any jurisdiction.

b. The firm or any of the firm’s owners (e.g., partners, shareholders, or members) has been convicted of any crime under the laws of any jurisdiction if an element of the crime involves dishonesty

or fraud, such as forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or similar offense, as more fully described in Iowa Code section 542.5(2).

c. The license to practice public accounting of the firm or any of the firm's owners (e.g., partners, shareholders, or members) has been suspended, revoked, or otherwise disciplined by a licensing authority in this or another state, territory, or country, for any cause other than failure to pay appropriate fees. "Disciplined" includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding in Iowa or any other jurisdiction.

d. The right of the firm or any of the firm's owners (e.g., partners, shareholders, or members) to practice public accounting before any state or federal agency or the PCAOB has been suspended or revoked.

e. The firm or any of the firm's owners (e.g., partners, shareholders, or members) has applied for licensure as a certified public accounting firm or a certified public accountant in Iowa or any other jurisdiction and the application has been denied.

f. Civil penalties have been imposed against the firm or any of the firm's owners (e.g., partners, shareholders, or members) pursuant to Iowa Code section 542.14.

g. The authority of the firm or any of the firm's owners (e.g., partners, shareholders, or members) to exercise a practice privilege has been revoked in Iowa or any other jurisdiction.

21.4(2) Firms precluded from exercising a practice privilege under this rule may apply for licensure in Iowa if otherwise qualified. The board will determine when an application is submitted whether the criminal or disciplinary history or other regulatory action against the firm or against any of the firm's owners (e.g., partners, shareholders, or members) provides a ground to deny licensure.

193A—21.5(542) Attest and compilation services. Unless otherwise obligated 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.

193A—21.6(542) Rights and duties.

21.6(1) CPA firms that satisfy the conditions for a practice privilege may practice public accounting in Iowa or for a client with a home office in Iowa in person, or by telephone, mail, or electronic means without licensure under Iowa Code chapter 542 or notice to the board.

21.6(2) CPA firms lawfully practicing public accounting under a practice privilege may use the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

21.6(3) CPA firms practicing public accounting in Iowa or for a client with a home office in Iowa while exercising a practice privilege are subject to all of the following provisions:

a. Practice privilege firms are not allowed to make any representation tending to falsely indicate that the firm is licensed under Iowa Code chapter 542. Such firms may truthfully identify themselves as licensed in any jurisdiction in which the firm holds a valid, active, unexpired license to practice as a certified public accounting firm. For example, a practice privilege firm could not use the title "Iowa CPAs" or "Iowa CPA firm" or otherwise state or imply licensure in Iowa, but, if true, the firm could use a title such as "CPA firm, licensed in Texas" or "Florida CPAs." Such firm could also truthfully state that the firm is practicing in Iowa under a practice privilege.

b. Practice privilege firms will provide, upon a client's or prospective client's request, accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

c. Practice privilege firms will comply with all professional standards, laws, and rules that apply to licensed firms performing the same professional services.

21.6(4) As a condition of exercising the practice privilege provided in Iowa Code section 542.20, the firm:

- a.* Consents to the personal and subject matter jurisdiction and regulatory authority of the board including, but not limited to, the board's jurisdiction to revoke the practice privilege or otherwise take action under Iowa Code section 542.14 for any violation of Iowa Code chapter 542 or board rules;
- b.* Appoints the regulatory body of the state that issued the license in the firm's principal place of business as the agent upon whom process may be served in any action or proceeding by the board against the firm;
- c.* Agrees to supply the board, upon the board's request and without subpoena, such information or records that licensed firms are similarly obligated to provide the board under Iowa Code chapter 542, including but not limited to the information described in Iowa Code section 542.20(7) "c," and rule 193A—7.3(542); and
- d.* Agrees to promptly cease offering or providing public accounting services in Iowa or for a client with a home office in Iowa if the license in the firm's principal place of business expires or is otherwise no longer in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

193A—21.7(542) Penalties.

21.7(1) Firms purporting to practice public accounting under a practice privilege that are ineligible to exercise a practice privilege or that fail to satisfy the conditions for exercising a practice privilege are subject to all of the penalties that apply to unlicensed firms, including the criminal, administrative, and civil penalties described in Iowa Code sections 542.14 and 542.15.

21.7(2) If a firm acting or purporting to act under a practice privilege engages in any act or practice that does or may in the future violate Iowa Code chapter 542 or board rules, the board may take any or all of the following actions, as applicable:

- a.* Apply to the district court for an injunction, restraining order, or other order, pursuant to Iowa Code section 542.14(1);
- b.* Issue an order compelling compliance with Iowa Code chapter 542 or board rules and impose a civil penalty pursuant to Iowa Code section 542.14;
- c.* Deny the subsequent license application of the violator or, to the extent responsible for the violation, any of the firm's owners (e.g., partners, shareholders, or members), pursuant to Iowa Code section 542.20(4) "a" and "b";
- d.* Refer the complaint or other relevant information to a jurisdiction that issued a license to the alleged violator; and
- e.* Take disciplinary action against the firm or, to the extent responsible for the violation, any of the firm's owners (e.g., partners, shareholders, or members), pursuant to Iowa Code section 542.10 if the firm or individual holds an inactive or lapsed Iowa license.

21.7(3) Complaints filed with the board alleging violations by firms that are not licensed by the board, including those acting or purporting to act under a practice privilege, are not confidential under Iowa Code section 272C.6(4) and will not be treated as confidential unless otherwise provided in Iowa Code chapter 22 or other applicable law.

21.7(4) Persons filing complaints with the board against firms acting or purporting to act under a practice privilege should provide as much information as possible to assist the board in locating the firm and the individuals allegedly responsible for the acts or omissions causing the complaint, and in determining whether the firm or any responsible individual is licensed in any jurisdiction.

193A—21.8(542) Relationship between Iowa licensure and the exercise of a practice privilege.

21.8(1) *Active Iowa licensees.* An Iowa CPA firm holding an active permit to practice under Iowa Code section 542.7 will be treated for all purposes as an Iowa licensee and is not subject to the provisions of Iowa Code section 542.20.

21.8(2) *Lapsed Iowa licensees.* An Iowa CPA firm holding a lapsed permit to practice under Iowa Code section 542.7 is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm" unless the firm is eligible to exercise a practice privilege under Iowa Code section

542.20. The following provisions apply to firms holding a lapsed Iowa permit to practice when exercising a practice privilege:

a. In a disciplinary investigation or proceeding alleging unlicensed practice or improper use of title, the board will consider whether the lapsed licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The firm will take reasonable steps to avoid public confusion over licensure status.

c. Violations of Iowa laws or rules by a firm holding a lapsed permit to practice will be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be prosecuted under the provisions of Iowa Code sections 542.14 and 542.15.

21.8(3) *Former Iowa licensees.* A CPA firm that held an Iowa permit to practice at one time which has been revoked or surrendered in connection with a disciplinary investigation or proceeding is barred from performing any act or practice for which Iowa firm licensure is necessary and is further ineligible to exercise the practice privilege described in Iowa Code section 542.20. Violations of Iowa Code chapter 542 or board rules by such a firm are subject to the criminal, civil and administrative remedies described in Iowa Code sections 542.14 and 542.15, and may also be prosecuted as disciplinary proceedings under Iowa Code section 542.10 if the license remains subject to reinstatement under 193A—subrule 7.6(3).

These rules are intended to implement Iowa Code section 542.20.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193B—Chapter 1
“Description of Organization”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544A.29
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544A

Public Hearing

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

November 21, 2023
3:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Architectural Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

Proposed Chapter 1 provides basic information on the structure and function of the Board, which benefits the public and licensees in knowing about the organization and administration of the Board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Chapter 1 provides organization and administrative background for the Board. The agency bears the cost of Board meetings, in the way of \$50 per diems per Board member, per meeting, plus travel expenses as needed and regular staff time. Staff salaries and per diems to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees to the Fund cover the operations of the regulated professional licensing boards.

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

The classes of persons that will benefit from the proposed rulemaking are licensees and the general public. Chapter 1 establishes the structure and operations of the Board, making it easier to navigate the regulation of the architecture profession.

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

- Quantitative description of impact:

The expenses of the Board, per diems and travel reimbursement are covered by the Licensing and Regulation Fund established in Senate File 557.

- Qualitative description of impact:

Iowans are protected by the laws of professional licensing through responsible regulations. The Board ensures minimum standards for licensing and resolves complaints against licensees.

3. Costs to the State:

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

Costs to the agency are staff time needed to manage Board activities and to pay the Board members \$50 per diem and reimburse travel expenses.

- Anticipated effect on state revenues:

There is not a significant impact to state revenues as a result of this rulemaking. Staff salaries are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

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

No new fees are being imposed. The benefit is less restrictive language and simplification of the rules for better understanding by the public and licensees.

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

Less restrictive alternatives would dilute the protection of the public. Reducing the nominal pay to the Board or reducing/eliminating travel expense reimbursement may serve to also reduce the interest of individuals to sit on the Board.

Due to state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These rule revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the Board structure. These rules offer the public helpful information regarding the structure of the Board. While the Board is not inclined at this time to make changes, it will consider evidence for future review.

The Board and Commission Review Committee made recommendations to consolidate the Landscape Architectural Examining Board duties into the Architectural Examining Board.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
Licensing and regulation are required by Iowa Code chapter 544A; the rules support the law.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

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

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

Iowa licenses architects, some of whom may own small businesses. The substantial impact on licensed small businesses from this chapter is negligible because there are no compliance requirements in Chapter 1. The function of the chapter is solely to inform.

Text of Proposed Rulemaking

ITEM 1. Rescind 193B—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
DESCRIPTION OF ORGANIZATION

193B—1.1(544A,17A) Duties.

1.1(1) The purpose of the architectural examining board is to administer and enforce the provisions of Iowa Code chapter 544A with regard to the practice of architecture in the state of Iowa, including the examining of candidates, issuing licenses to practice architecture, assuring continuing competency through continued education, investigating violations and infractions of the architecture law, disciplining licensees, and imposing civil penalties against nonlicensees. To this end, the board has promulgated these rules to clarify the board's intent and procedures.

1.1(2) The primary mission of the board is to protect the public interest. All board rules foster the guiding policies and principles described in Iowa Code section 544A.5. The board and its licensees strive at all times to protect the public interest by promoting the highest standards of architecture.

1.1(3) The board maintains a roster of all architects authorized to practice architecture in the state.

1.1(4) Chairperson. The chairperson presides at all meetings, appoints all committees, and otherwise performs all duties pertaining to the office of the chairperson.

1.1(5) Vice chairperson. The vice chairperson, in the absence or incapacity of the chairperson, exercises the duties and possesses the powers of the chairperson.

1.1(6) Board administrator. The department of inspections, appeals, and licensing may employ a board administrator who will maintain all necessary records of the board and perform all duties in connection with the operation of the board office. The board administrator determines when the legal requirements for licensure have been satisfied with regard to issuance of certificates, licenses or registrations, and the board administrator submits to the board any questionable application.

193B—1.2(544A,17A) Meetings. Calls for meetings are issued in accordance with Iowa Code section 21.4. The first meeting scheduled after April 30 is the annual meeting. The chairperson and vice chairperson are elected to serve until their successors are elected. The newly elected officers assume the duties of their respective offices at the conclusion of the meeting at which they are elected. Officers may serve no more than three consecutive one-year terms in each office to which they are elected. Special meetings may be called by the chairperson or board administrator, who will set the time and place of the meeting.

193B—1.3(544A,17A) Certificates. Certificates issued to successful applicants contain the licensee's name and state license number. All licenses are renewable biennially on July 1, with licensees whose last names begin with the letters A through K renewing in even-numbered years and licensees whose last names begin with the letters L through Z renewing in odd-numbered years as provided in rule 193B—2.5(17A,272C,544A).

The board will maintain an electronic roster of those holders of certificates of licensure who have failed to renew.

These rules are intended to implement Iowa Code sections 544A.5, 544A.8 through 544A.10, and 272C.4.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193B—Chapter 2
“Licensure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544A.29
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544A

Public Hearing

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

November 21, 2023
3:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Architectural Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

Proposed Chapter 2 establishes the minimum standards for architecture licensure. The public, licensees, and applicants benefit from the chapter since it articulates the processes by which individuals apply for licensure as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual who holds a license has minimum competency. These provisions include the application process, minimum educational and training qualifications, and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee.

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

The public and professionals benefit from the proposed chapter. Establishing minimum licensing requirements ensures that practitioners are competent to practice architecture. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public.

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

- Quantitative description of impact:

Estimation of the cost of education and other licensure requirements to become an Iowa licensed architect are:

- o Education: According to the Association of Collegiate Schools of Architecture, the median tuition per year at a public institution for architecture is \$10,125 for a bachelor's degree and \$13,339 for a master's degree. At a private institution, the cost is \$39,982 for a bachelor's degree and \$40,273 for a master's degree.

- o Experience/training: There is not usually a cost since intern architects are paid for their work at a firm. Intern architects must pay \$100 to the National Council of Architectural Registration Boards to participate in the training program.

- o Examination fee: \$1,410 (initial licensure by examination only, paid to the National Council of Architectural Registration Boards).

- o Transmittal fee: \$450 (reciprocal licensure only, paid to the National Council of Architectural Registration Boards). Architects may choose to hold a certificate from the National Council of Architectural Registration Boards, which facilitates easy reciprocal licensure and which has an annual fee of \$270.

- o Other fees: Applicants may need to pay a licensure verification fee to other jurisdictions (licensure by verification only, paid to other jurisdictions).

- o Licensure by examination application/license fee: \$50 plus \$5 per month until renewal.

- o Licensure by reciprocity or verification application/license fee: \$200.

Nebraska's license fees are \$100 for an initial license and \$150 for a reciprocal license. Minnesota's application fee is \$75, plus a \$120 license fee. Iowa, Nebraska, and Minnesota are among the 38 states that require an accredited degree in order to obtain an architect license.

- Qualitative description of impact:

In order to regulate and license professions as directed in statute, base standards for licensure are critical to protecting public safety. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals and reinstatements. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The Board believes all current requirements ensure public safety and ensure a minimum competency of service is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of architects in other states, which makes obtaining licensure in multiple states simpler for applicants.

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

The Board has not identified a more cost-effective alternative to the licensure. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rule provides consistency related to the licensure in other states, which makes obtaining licensure in multiple states simpler for applicants. The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are able to safely interact with the built environment.

Due to state government alignment, this Board is now part of the Department of Inspections, Appeals and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These rule revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to licensure. While Iowa could deregulate the architecture profession, it would be the only state to do so. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. Architects make sure that buildings are safe and meet state building codes. In addition, the chapter provides consistency related to the licensure in other states, which makes obtaining licensure in multiple states simpler for applicants.

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

The Board has not identified a more cost-effective alternative to licensure. While Iowa could deregulate the architecture profession, it would be the only state to do so. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. Architects make sure that buildings are safe and meet state building codes. In addition, the rule provides consistency related to the licensure in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

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

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

- Exempt small business from any or all requirements of the rulemaking.

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements. While some architects likely are running a small business of their own, some also work for large corporations and firms. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193B—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
LICENSURE

193B—2.1(544A,17A) Definitions. The following definitions apply as used in Iowa Code chapter 544A, and this chapter of the architectural examining board rules, unless the context otherwise requires.

“*Applicant*” means an individual who has submitted an application for licensure to the board.

“*Architectural intern*” or “*intern architect*” means an individual who holds a professional degree from a NAAB-accredited program or the equivalent as deemed by the Board, has completed or is currently enrolled in the National Council of Architectural Registration Boards (NCARB) Architectural Experience Program (AXP), and intends to actively pursue licensure by completing the Architect Registration Examination.

“*ARE*” means the current Architect Registration Examination, as prepared and graded by the NCARB.

“*AXP applicant*” means an individual who has completed the AXP training requirements set forth in the NCARB Architectural Experience Program Guidelines and has submitted an application for licensure to the board.

“*Examination*” means the current Architect Registration Examination (ARE) accepted by the board.

“*Inactive*” means that an architect is not engaged in Iowa in any practice for which a certificate of licensure is required.

“*Issuance*” means the date of mailing of a decision or order or the date of delivery if service is by other means unless another date is specified in the order.

“*NAAB*” means the National Architectural Accrediting Board.

“*NCARB*” means the National Council of Architectural Registration Boards. The NCARB Architect Registration Examination Guidelines, NCARB Architectural Experience Program Guidelines, and NCARB Certification Guidelines are available through the National Council of Architectural Registration Boards, 1401 H Street NW, Suite 500, Washington, DC 20005; NCARB’s website, www.ncarb.org; or the architectural examining board.

“*NCARB Architect Registration Examination (ARE) Guidelines*” means the edition of a document by the same title published by the National Council of Architectural Registration Boards on September 2022. The document outlines the requirements for examination.

“*NCARB Architectural Experience Program Guidelines*” means the edition of a document by the same title published by the National Council of Architectural Registration Boards on May 2020. The document outlines the requirements for training.

“*NCARB Certification Guidelines*” means the edition of a document by the same title published by the National Council of Architectural Registration Boards on July 2022. The document outlines the requirements for licensure as an architect.

“NCARB *Education Guidelines*” or “NCARB *Education Standards*” means the edition of a document by the same title published by the National Council of Architectural Registration Boards on December 2023. The document outlines the requirements for licensure as an architect.

“*Retired*” means that an architect is not engaged in the practice of architecture or earning monetary compensation by providing professional architectural services in any licensing jurisdiction of the United States or a foreign country.

193B—2.2(544A,17A) Licensure. All applicants for licensure will complete an online application form.

2.2(1) Examination. To be eligible for licensure by examination, all applicants will have obtained an accredited professional architectural degree from the National Architectural Accrediting Board (NAAB), passed all divisions of the ARE prepared and provided by the National Council of Architectural Registration Boards (NCARB), have completed the NCARB Architectural Experience Program, and have attained an NCARB council record. A completed NCARB council record shall be transmitted to and filed in the board office. Upon receipt of the council record from NCARB, the board will provide the applicant with an application for licensure form, which must be completed and returned to the board within three months of receipt of the council record. The board shall issue a license number to the applicant upon receipt of the completed application form and appropriate fee.

a. Examinations for licensure as an architect shall be conducted by the board or its authorized representative.

(1) The board shall make use of the ARE prepared and graded by NCARB under a plan of cooperation with the architectural examining boards of all states and territories of the United States.

(2) The board may make use of a testing service selected by NCARB to administer the examination, provided the examination is held in at least one location within the boundaries of this state.

b. Examination admittance requirements.

(1) Have completed the eligibility requirements of the education standards for NCARB certification, which include a professional degree from a program accredited by the National Architectural Accrediting Board (NAAB) or other NCARB-approved education program or be a student actively participating in an NCARB-accepted Integrated Path to Architectural Licensure (IPAL) option within an NCARB-approved education program.

(2) Be enrolled in or have completed the NCARB Architectural Experience Program (AXP).

(3) NCARB shall notify the testing service of the applicant’s eligibility prior to the applicant’s scheduling of an examination.

c. AXP eligibility requirements will be verified and satisfied in accordance with the NCARB Architectural Experience Program Guidelines. Documentation of AXP training units will be submitted on AXP report forms published by NCARB and will be verified by signatures of the licensed architects serving as the intern architect’s supervisors in accordance with the requirements outlined in the NCARB Architectural Experience Program Guidelines. The completed AXP report form shall demonstrate attainment of an aggregate of the minimum number of value units in each training area and shall be submitted to NCARB for evaluation.

2.2(2) Reciprocity. The board or the board administrator may waive examination requirements for applicants who, at the time of application, are licensed as architects in a different jurisdiction and hold an active NCARB certificate. All such applicants who hold an active NCARB certificate are deemed to possess qualifications that are substantially equivalent to those required of applicants for initial licensure in this state. An active NCARB council certificate shall be transmitted to and filed in the board office. Upon receipt of the certificate from NCARB, the board will provide the applicant with an application for licensure form, which must be completed and returned to the board within three months of receipt of the council certificate.

2.2(3) Verification. The board may grant registration via verification as provided for in 193—Chapter 14.

2.2(4) Military service and veteran reciprocity. The board may grant registration for military service applicants, spouses, and veterans as provided for in 481—Chapter 7.

2.2(5) Applicants seeking architectural commission in Iowa. A person seeking an architectural commission in this state may be admitted to this state for the purpose of offering to provide architectural services, and for that purpose only, without first being licensed in this state if:

- a. The person holds an NCARB certificate; and
- b. The person holds a current and valid license issued by a licensing authority recognized by this state; and
- c. The person notifies the board in writing on a form provided by the board that the person:
 - (1) Holds an NCARB certificate and a current and valid license issued by a licensing authority recognized by this state,
 - (2) Is not currently licensed in this state but will be present in this state for the purpose of offering to provide architectural services on a temporary basis, and
 - (3) Has no previous or pending disciplinary action by any licensing authority; and
- d. The person delivers a copy of the notice referred to in paragraph “c” to every potential client to whom the person offers to provide architectural services; and
- e. The person provides the board with a sworn statement of intent to apply immediately to the board for licensure if selected as the architect for a project in this state.

The person is prohibited from actually providing architectural services until the person has been issued a valid license in this state.

2.2(6) Board refusal to issue license. The board may refuse to issue a certificate of licensure to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended or may otherwise discipline a licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, “disciplinary action” includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

193B—2.3(17A,272C,544A) Renewal of certificates of licensure.

2.3(1) Active status. Certificates of licensure expire biennially on June 30. In order to maintain authorization to practice in Iowa, a licensee is required to renew the certificate of licensure prior to July 1 of the year of expiration. A licensee who fails to renew by the expiration date is not authorized to practice architecture in Iowa until the certificate is reinstated as provided in rule 193B—2.4(544A,17A).

a. A licensee whose last name begins with the letter A through K will renew in even-numbered years, and a licensee whose last name begins with the letter L through Z will renew in odd-numbered years. However, a license issued on or after May 1 but before June 30 will not expire until June 30 of the next renewal. For example, a license issued on May 17, 2020, would not expire until June 30, 2022.

b. It is the policy of the board to send to each licensee a notice of the pending expiration date at the licensee’s last-known address approximately one month prior to the date the certificate of licensure is scheduled to expire. The notice, when provided, may be by email communication. Failure to receive this notice does not relieve the licensee of the responsibility to timely renew the certificate and pay the renewal fee. A licensee should contact the board office if the licensee does not receive a renewal notice prior to the date of expiration.

c. Upon the board’s receipt of a timely and sufficient renewal application as provided in 193—subrule 7.40(3), the board’s administrator will issue a new certificate of licensure reflecting the next expiration date, unless grounds exist for denial of the application.

d. If grounds exist to deny a timely and sufficient application to renew, the board will send notification to the applicant. Grounds may exist to deny an application to renew if, for instance, the licensee failed to satisfy the continuing education as required as a condition for licensure. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board will proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board’s decision as provided in 193—subrule 7.40(1).

e. When a licensee appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), and after or in lieu of giving the licensee an opportunity to come into compliance under 193B—subrule 3.3(3), offer a licensee the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and require that the licensee complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the licensee. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed certificate of licensure and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.40(1).

f. The board may notify a licensee whose certificate of licensure has expired. The failure of the board to provide this courtesy notification or the failure of the licensee to receive the notification will not extend the date of expiration.

g. A licensee who continues to practice architecture in Iowa after the license has expired may be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a licensee's application for reinstatement.

2.3(2) Inactive status. This subrule establishes a procedure under which a person issued a certificate of licensure as an architect may apply to the board to be licensed as inactive. Licensure under this subrule is available to a license holder who is not engaged in Iowa in any practice for which licensure as an architect is required. A person eligible to be licensed as inactive may, as an alternative to such licensure, allow the certificate of licensure to lapse. During any period of inactive status, a person shall not use the title "architect" or any other title that might imply that the person is offering services as an architect by such an action in violation of Iowa Code section 544A.15. The board will continue to maintain a database of persons licensed as inactive, including information which is not routinely maintained after a certificate has lapsed through the person's failure to renew. A person who is licensed as inactive will accordingly receive renewal applications, board newsletters and other mass communications from the board.

a. Affirmation. The renewal application form will contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa that are listed in Iowa Code section 544A.16 without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to rule 193B—2.5(544A).

b. Renewal. A person licensed as inactive may renew the person's certificate of licensure on the biennial schedule described in this rule. This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in 193B—2.9(544A,17A). An inactive certificate of licensure will lapse if not timely renewed.

c. Permitted practices. A person may, while licensed as inactive, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of licensure has never been issued. Such services may be performed as long as the person does not in connection with such services use the title "architect" or any other title restricted for use only by architects pursuant to Iowa Code section 544A.15 (with or without additional designations such as "inactive" or "retired"). Restricted titles may be used only by active architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education.

d. Prohibited practices. A person who, while licensed as inactive, engages in any of the practices described in Iowa Code sections 544A.15 and 544A.16 is subject to disciplinary action.

2.3(3) Retired status. A person who held a license as an architect and who does not reasonably expect to return to the workforce in any capacity for which a certificate of licensure is required due to bona fide retirement or disability may apply to the board for retired status and, if granted, may use the title

“architect retired” in the context of non-income-producing personal activities. If the board determines an applicant is eligible, the retired status would become effective on the first scheduled license renewal date. Applicants do not need to reinstate an expired license to be eligible for retired status. Applicants may apply for retired status on forms provided by the board. The board will not provide a refund of biennial license fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Persons licensed in retired status are exempt from the renewal requirement.

a. Affirmation. The retired status application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa that are listed in Iowa Code section 544A.16 without first complying with all rules governing reinstatement to active status. A person in retired status may reinstate to active status at any time pursuant to rule 193B—2.5(544A).

b. Permitted practices. Persons licensed in retired status may engage in the practices identified in paragraph 2.(2) “c.” Such persons may also provide services as technical experts before a court, including prelitigation preparation, discovery, and testimony, on matters directly related to architectural services provided by such persons prior to being licensed with the board in retired status.

c. Exemption. A person whose license as an architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless, upon appropriate application, the board first reinstates the license to good standing.

193B—2.4(544A,17A) Reinstatement of lapsed certificate of licensure to active status. An individual may reinstate a lapsed certificate of licensure to active licensure as follows:

2.4(1) Pay the current renewal fee.

2.4(2) Pay the reinstatement fee of \$100 plus \$25 per month or partial month of expired licensure up to a maximum of \$750. All applicants for reinstatement shall be assessed the \$100 reinstatement fee. The \$25 per month shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active architect license is required in Iowa. Falsely claiming an exemption from the monthly fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.

2.4(3) Provide a written statement outlining the applicant’s professional activities performed in Iowa during the period in which the individual was unlicensed. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant.

2.4(4) Submit documented evidence of completion of 24 continuing education hours, which should have been reported on the June 30 renewal date on which the applicant failed to renew, and 12 continuing education hours for each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities and be in compliance with requirements in 193B—Chapter 3. The hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status. The continuing education hours used for reinstatement may not be used again at the next renewal.

193B—2.5(544A) Reinstatement from inactive status or retired status to active status.

2.5(1) An individual may reinstate an inactive license to an active license as follows:

a. Pay one-half of the current active license fee.

b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is 12 months or more, but less than 24 months, from the date of the filing of the application to restore the certificate of licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of inactive licensure.

2.5(2) An individual may reinstate a retired license to an active license as follows:

a. Pay the current active license fee. If the individual is reinstating to active status at a date that is less than 12 months from the next biennial renewal date, one-half of the current active license fee shall be paid.

b. Satisfy paragraphs 2.1(1) “b” and “c.”

2.5(3) An individual shall not be allowed to reinstate to inactive status from retired status.

193B—2.6(544A,17A) Finding of probable cause for unlicensed practice. The board may find probable cause to file charges for unlicensed practice if the individual continues to offer services defined as the practice of architecture outlined in Iowa Code section 544A.16 while using the title “architect,” “architectural designer,” or similar designation during the period of lapsed licensure.

193B—2.7(544A,272C) Responsibility for accuracy of applications. The architect is responsible for verifying the accuracy of the information submitted on an application regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of an architect’s firm submits an application for renewal on behalf of the architect and that information is incorrect, the architect will be held responsible for the information and may be subject to disciplinary action.

193B—2.8(544A,272C) Application denial. An application may be denied on the grounds provided in Iowa Code chapter 544A and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee’s qualifications for licensure. The board may also deny a license on the grounds of submitting a false statement or submission of material fact on an application for licensure.

193B—2.9(544A,17A) Fee schedule. Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

Examination fees:

Fees for examination subjects shall be paid directly to the testing service selected by NCARB.

| | |
|--|--|
| Initial license fee | \$ 50 |
| (plus \$5 per month until renewal) | |
| Reciprocal application and license fee | \$200 |
| Verification application and license fee | \$200 |
| Biennial renewal fee | \$200 |
| Biennial renewal fee (inactive) | \$100 |
| Retired status | None |
| Reinstatement of lapsed individual license | \$100 + renewal fee + \$25 per month or partial month of expired license |

| | |
|--|-------|
| Reinstatement of inactive individual license | \$100 |
| Reinstatement of retired individual license | \$200 |
| Duplicate wall certificate fee | \$ 50 |
| License predetermination fee | \$ 25 |
| Fee for return of payment | \$ 30 |
| All fees are nonrefundable. | |

These rules are intended to implement Iowa Code chapters 544A and 17A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193B—Chapter 3
“Continuing Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544A.29 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 544A, 272C, and 17A

Public Hearing

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

November 21, 2023
3:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Architectural Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

Proposed Chapter 3 sets forth continuing education requirements for licensed architects to ensure continuing competency. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that architects maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Licensees are responsible for the cost of continuing education. There are multiple private entities that provide continuing education courses to licensees. Some do offer free continuing education. Some design firms offer free continuing education for their employees. The costs vary, but an average cost, if incurred at all, is an estimated \$25 per hour, bringing the total cost to \$600 every two years for a licensee to meet these requirements.

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

The intended benefit of continuing education is to ensure ongoing competency for architects to maintain up-to-date practice standards and provide quality services to Iowans, protecting public safety in the built environment.

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

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offers continuing education courses so the Board is not privy to exact costs. Based on research estimates, it is around \$600 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 24 hours of continuing education every two years. The Board is in alignment with national model law for architect regulation.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on the up-to-date standard of practice care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country, including Iowa's neighboring states, require continuing education.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements and performing continuing education audits. Shared staff at approximately 0.5 full-time equivalent (FTE) position support the entirety of the work of the Board.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact to state revenues from this chapter.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. Forty-four states require continuing education; all of the states within this region require continuing education. Illinois, Nebraska, Minnesota, and Missouri also require 24 hours of continuing education every two years. The Board is in alignment with national model law for architect regulation.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

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

Less restrictive alternatives would be to reduce the amount of continuing education required. Forty-four states require continuing education; all of the states within this region require continuing education. Illinois, Nebraska, Minnesota, and Missouri also require 24 hours of continuing education every two years. The Board is in alignment with national model law for architect regulation.

The Department of Inspections, Appeals, and Licensing (DIAL) Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These rule revisions support this effort.

6. Alternative methods considered by the agency:

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

Less restrictive alternatives would be to reduce the amount of continuing education required. Forty-four states require continuing education; all of the states within this region require continuing education. Illinois, Nebraska, Minnesota, and Missouri also require 24 hours of continuing education every two years. The Board is in alignment with national model law for architect regulation.

The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These rule revisions support this effort.

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

The Board is in alignment with national model law for architect regulation. All of the states within this region require continuing education. Illinois, Nebraska, Minnesota, and Missouri also require 24 hours of continuing education every two years.

Small Business Impact

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

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

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for architects. While some architects likely are running a small business of their own, some also work for large organizations. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

The entities that provide continuing education may have a negative impact on their revenue due to less demand for architectural continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 193B—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
CONTINUING EDUCATION

193B—3.1(544A,272C) Continuing education. The following rules adopted by the architectural examining board are in compliance with Iowa Code chapter 544A and section 272C.2 requiring professional and occupational licensees to participate in a continuing education program as a condition of license renewal.

193B—3.2(544A,272C) Definitions. The following definitions apply as used in Iowa Code chapter 544A and this chapter of the architectural examining board rules, unless the context otherwise requires.

“Continuing education” or *“CE”* means postlicensure learning that enables a licensed architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public’s health, safety, and welfare.

“Continuing education hour” or *“CEH”* means one continuous instructional hour (50 to 60 minutes of contact) spent in structured educational activities intended to increase or update the architect’s knowledge and competence in health, safety, and welfare subjects. If the provider of the structured educational activities prescribes a customary time for completion of such an activity and if the prescribed time is not deemed unreasonable by the board, then such prescribed time will be accepted for CEH purposes as the architect’s time irrespective of actual time spent on the activity.

“Distance learning” means any education process based on the geographical separation of student and instructor. “Distance learning” includes computer-generated programs, webinars, and home-study/correspondence programs.

“Health, safety, and welfare subjects” means technical and professional subjects that the board deems appropriate to safeguard the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction, and utilization of buildings and the built environment.

1. Building systems: structural, mechanical, electrical, plumbing, communications, security, and fire protection.
2. Construction contract administration: contracts, bidding, and contract negotiations.
3. Construction documents: drawings, specifications, and delivery methods.
4. Design: urban planning, master planning, building design, site design, interiors, safety and security measures.
5. Environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, and insulation.
6. Legal: laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, and insurance to protect owners and the public.
7. Materials and methods: construction systems, products, finishes, furnishings, and equipment.
8. Occupant comfort: air quality, lighting, acoustics, and ergonomics.
9. Predesign: land use analysis, programming, site selection, site and soils analysis, and surveying.
10. Preservation: historic, reuse, and adaptation.

“Not engaged in active practice” means that an architect is not engaged in the practice of architecture or earning monetary compensation by providing professional architectural services in any licensing jurisdiction of the United States or a foreign country.

“Retired from active practice” has the same meaning as “not engaged in active practice.”

“Structured educational activities” means educational activities in which at least 75 percent of an activity’s content and instructional time is to be devoted to health, safety, and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety, and welfare subjects and provided by qualified individuals or organizations, whether the courses of study or other activities are delivered by direct contact or distance learning methods.

193B—3.3(544A,272C) Basic requirements.

3.3(1) To renew licensure, an architect must, in addition to meeting all other requirements, complete a minimum of 24 CEHs for each 24-month period since the architect's last renewal of initial licensure or be exempt from these continuing education requirements as provided in rule 193B—3.5(544A,272C). Failure to comply with these requirements may result in nonrenewal of the architect's license.

3.3(2) All 24 CEHs must be completed in health, safety, and welfare subjects acquired in structured educational activities. CEHs may be acquired at any location. Excess CEHs cannot be credited to the next renewal.

3.3(3) An architect will complete and submit forms as required by the board certifying that the architect has completed the required CEHs. Forms may be audited by the board for verification of compliance with these requirements. Documentation of reported CEHs will be maintained by the architect for two years after the period for which the form was submitted. Any discrepancy between the number of CEHs reported and the number of CEHs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any CEHs, or the licensee has failed to complete the required CEHs, the architect will have 60 days from notification of the board to either provide further evidence of having completed the CEHs disallowed or remedy the disallowance by completing the required number of CEHs (provided that such CEHs are not used for the next renewal). An extension of time may be granted on an individual basis and must be requested by the licensee within 30 days of notification by the board. If the licensee fails to comply with the requirements of this subrule, the licensee may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the architect willfully disregarded these requirements or falsified documentation of required CEHs, the architect may be subject to disciplinary action.

3.3(4) An architect who holds licensure in Iowa for less than 12 months from the date of initial licensure or who is reinstating to active status is not required to report CEHs at the first license renewal. An architect who holds licensure in Iowa for 12 months or more, but less than 23 months from the date of initial licensure or who is reinstating to active status, is required to report 12 CEHs earned in the preceding 12 months at the first license renewal.

193B—3.4(544A,272C) Authorized structured educational activities. The following list may be used by all licensees in determining the types of activities which may fulfill CE requirements if the activities are conducted as structured educational activities on health, safety, and welfare subjects:

1. Short courses or seminars sponsored by colleges or universities.
2. Technical presentations held in conjunction with conventions or at seminars sponsored or accredited by the American Institute of Architects (AIA), Construction Specifications Institute, Construction Products Manufacturers Council, National Council of Architecture Registration Boards (NCARB), or similar organizations devoted to architectural education.
3. Distance learning sponsored by the AIA, NCARB, or similar organizations.
4. College or university credit courses. Each semester hour equals 12 CEHs. A quarter hour equals 8 CEHs.

193B—3.5(544A,272C) Exemptions.

3.5(1) As provided in Iowa Code section 272C.2(4), a licensed architect will be deemed to have complied with the continuing education requirements set forth in this chapter if the architect attests in the required affidavit that for not less than 21 months of the preceding two-year period of licensure, the architect:

- a.* Has served honorably on active duty in the military service; or
- b.* Is a resident of another state or district having a continuing education requirement for licensure as an architect and has complied with all requirements of that state or district for practice therein; or
- c.* Is a government employee working as an architect and assigned to duty outside the United States.

3.5(2) Architects who so attest on their affidavits that they are retired from active practice or are not engaged in active practice may maintain their licenses in retired or inactive status without satisfying

CE requirements. Such architects may, however, reenter practice only after satisfying the board of their proficiency. Proficiency may be established by any one of the following:

a. Submitting verifiable evidence of compliance with the aggregate continuing education requirements for the reporting periods attested as retired from active practice or not engaged in active practice up to a maximum of 48 CEHs.

b. Retaking the architectural registration examination.

c. Fulfilling alternative reentry requirements determined by the board which serve to assure the board of the current competency of the architect to engage in the practice of architecture.

3.5(3) The board may make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. See Iowa Administrative Code 193—Chapter 5.

These rules are intended to implement Iowa Code section 272C.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193B—Chapter 4
“Rules of Conduct”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544A.29, 272C, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 544A, 272C, 17A

Public Hearing

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

November 21, 2023
3:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Architectural Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

Proposed Chapter 4 provides licensees and Iowa with the rules of conduct for architects who are practicing architecture, in order to protect the public health, safety, and welfare by ensuring safe structures.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are costs associated with practicing architecture in a competent manner, as well as time, effort and money associated with compliance. Costs to the licensee include the cost of a seal, which costs under \$50.

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

The general public and licensees benefit from this chapter. The chapter provides rules of conduct for the practice of architecture to ensure the public safety and welfare in the built environment. If architecture were not regulated, it could mean that less-skilled individuals would design buildings that may not meet safety standards. Architecture is regulated in all 50 states.

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

- Quantitative description of impact:

The Board believes that the benefits achieved justify the costs because the chapter provides rules of conduct for the practice of architecture to ensure the public safety and welfare in the built environment. If architecture were not regulated, it could mean that less-skilled individuals would design buildings that may not meet safety standards. Architecture is regulated in all 50 states.

Licensees bear costs in the form of licensing fees and compliance.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing rules of conduct for architects ensures safety for Iowans in the built environment. If this profession were not regulated, it could mean less-skilled individuals would design buildings that may not meet safety standards.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes oversight of the rules of conduct, questions from licensees and the public, administration of Board meetings, etc. Shared staff at approximately 0.5 full-time equivalent (FTE) position support the entirety of the work of the Board. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The Board believes that the benefits achieved justify the costs because the chapter provides rules of conduct for the practice of architecture to ensure the public safety and welfare in the built environment. If architecture were not regulated, it could mean that less-skilled individuals would design buildings that may not meet safety standards. Architecture is regulated in all 50 states.

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

Licensing is the highest form of regulation. Architecture is regulated in all 50 states.

6. Alternative methods considered by the agency:

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

The Board has not identified any other alternatives to rules of conduct.

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

The Board has not identified any other alternatives to rules of conduct.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

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

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for architects. While some architects likely are running a small business of their own, some also work for large organizations. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193B—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
RULES OF CONDUCT

193B—4.1(544A,17A) Rules of conduct. Failure by a licensee to adhere to the provisions of Iowa Code sections 272C.10 and 544A.13 and the following rules of conduct is grounds for disciplinary action.

4.1(1) Definition. The following definition applies as used in Iowa Code chapter 544A and this chapter of the architectural examining board rules, unless the context otherwise requires.

“*Responsible charge*” means the amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a licensed architect applying the necessary professional standard of care, including but not limited to an architect’s integration of information from manufacturers, suppliers, installers; the architect’s consultants, owners, contractors; or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect’s technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

4.1(2) Competence.

a. In practicing architecture, an architect will act with reasonable care and competence and will apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.

b. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of all applicable state and municipal building laws and regulations, once having obtained such advice, an architect will not knowingly design a project in violation of these laws and regulations.

c. An architect may perform professional services only when the architect, together with those whom the architect may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.

d. No person is permitted to practice architecture if, in the board’s judgment upon receipt of medical testimony or evidence, the person’s professional competence is substantially impaired by physical or mental disabilities.

4.1(3) Conflict of interest.

a. An architect may accept compensation for services from more than one party on a project if the circumstances are fully disclosed to and agreed to in writing by all interested parties.

b. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence the architect's judgment in connection with the architect's performance of professional services, the architect will fully disclose, in writing, to the client or employer the nature of the business association or financial interest, and if the client or employer objects to the association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

c. An architect may not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing the products.

d. When acting as the interpreter of building contract documents and the judge of contract performance, an architect will render decisions impartially, favoring neither party to the contract.

4.1(4) Full disclosure.

a. When making public statements on architectural questions, an architect will disclose when compensation is being received for making the statements.

b. An architect will accurately represent to a prospective or existing client or employer the architect's qualifications, capabilities, and experience and the scope of the architect's responsibility in connection with work for which the architect is claiming credit.

c. If, in the course of work on a project, an architect becomes aware of a decision taken by the employer or client against the architect's advice which violates applicable state or municipal building laws and regulations and which may, in the architect's judgment, adversely affect the safety to the public of the finished project, the architect will:

(1) Report the decision to the local building inspector or other public official charged with enforcement of the applicable state or municipal building laws and regulations,

(2) Refuse to consent to the decisions, and

(3) In circumstances where the architect reasonably believes that other decisions will be taken, notwithstanding the architect's objection, terminate the architect's services with reference to the project.

d. An architect will not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for licensure or renewal of license.

e. An architect will not assist the application for licensure of a person known by the architect to be unqualified in respect to education, training, experience or character.

f. An architect possessing knowledge of a violation of these rules by another architect will report the knowledge to the board.

4.1(5) Compliance with laws.

a. An architect will not, in the conduct of architectural practice, knowingly violate any state or federal criminal law. A "conviction" for purposes of this paragraph and Iowa Code section 544A.13 means a conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice the profession of architecture and includes the court's acceptance of a guilty plea, a deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence. A licensed architect will notify the board of a conviction within 30 days of the conviction.

b. An architect will neither make nor offer to make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

c. An architect will comply with the licensing laws and regulations governing the architect's professional practice in any United States jurisdiction.

d. An Iowa-licensed architect will report to the board in writing any revocation, suspension, license denial, or other disciplinary action taken by a licensing authority in any other state or jurisdiction within 30 days of the final action.

4.1(6) Professional conduct.

a. Each office engaged in the practice of architecture will have an architect resident regularly employed in that office having responsible charge of such work or, in the situation of work performed

remotely, immediately available to furnish assistance or direction throughout the performance of the work.

b. An architect may only sign or seal drawings, specifications, reports or other professional work for which the architect has direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the architect's consultants, licensed under this or another professional licensing law of this jurisdiction, the architect may sign or seal that portion of the professional work if the architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

c. An architect will neither offer nor make any gifts to any public official with the intent of influencing the official's judgment in connection with a project in which the architect is interested. Nothing in this rule will bar an architect from providing architectural services as a charitable contribution.

d. An architect will not engage in conduct involving fraud or wanton disregard of the rights of others.

e. Architects will adhere to the appropriate standards of conduct as outlined in the NCARB Model Rules of Conduct, dated July 2018, incorporated herein by reference.

4.1(7) Seal and certificate of responsibility.

a. The seal under Iowa Code section 544A.28 includes:

- (1) An outside circle with a diameter of approximately 1¾ inches.
- (2) The name of the licensed architect and the words "Licensed Architect".
- (3) The Iowa license number and the word "Iowa".
- (4) The seal will substantially conform to the samples shown below:



b. A legible rubber stamp, electronic image or other facsimile of the seal may be used.

c. Each technical submission submitted to a client or any public agency, hereinafter referred to as the official copy, will contain an information block on its first page or on an attached cover sheet with application of a seal by the architect in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature will be applied only to a final technical submission. Each official copy of a technical submission will be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block will display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional will be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block will substantially conform to the sample shown below:

| | |
|---------|---|
| S E A L | <p>I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly licensed architect under the laws of the state of Iowa.</p> <hr/> <p style="text-align: center;">Signature Date</p> <p>Printed or typed name _____</p> <p>License number _____</p> <p>My license renewal date is June 30, _____.</p> <p>Pages or sheets covered by this seal: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> |
|---------|---|

d. The information requested in each information block must be typed or legibly printed in permanent ink or a secure electronic signature. An electronic signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule if it is protected by a security procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the licensee’s responsibility to ensure, prior to affixing an electronic signature to a technical submission, that security procedures are adequate to (1) verify that the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

e. The architect who signed the original submission is responsible for forwarding copies of all changes and amendments to the technical submission, which becomes a part of the official copy of the technical submission, to the public official charged with the enforcement of the state, county, or municipal building code.

f. An architect is responsible for the custody and proper use of the seal. Improper use of the seal is grounds for disciplinary action.

g. The seal appearing on any technical submission establishes prima facie evidence that said technical submission was prepared by or under the responsible charge of the individual named on that seal.

4.1(8) Communications. An architect will, when requested, respond to communications from the board within 30 days of the mailing of such communication by certified mail. Failure to respond to such communication may be grounds for disciplinary action against the architect.

4.1(9) Architectural Experience Program supervisor. The Architectural Experience Program supervisor, formerly known as the Intern Development Program supervisor, will timely respond to a request to verify experience hours reported to the National Council of Architectural Registration Boards’ Architectural Experience Program when requested by NCARB, the board, or a subordinate, associate, or intern who is, or has been, supervised by the Architectural Experience Program supervisor.

This rule is intended to implement Iowa Code chapters 17A and 544A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193B—Chapter 5
“Exceptions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544A.29, 272C, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 544A, 272C, and 17A

Public Hearing

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

November 21, 2023
3:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Architectural Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

Iowa residents, the public, building code officials, licensees and employers benefit from proposed Chapter 5 because it clarifies when an architect is needed to design or make alterations to a building. The chapter establishes guidelines for the types of projects where architectural services are needed to provide for the health and safety of those who occupy buildings and interact in the built environment. Architects ensure safety by adhering to federal and state laws, building codes, and zoning laws.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Costs to the public would include fees paid to an architect or architectural firm; the costs vary depending on the size and complexity of the project. However, the costs to use architectural services have the benefit of ensuring safe buildings. The Board recognizes that there are costs associated with the requirements but is unable to assess the actual cost.

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

The general public and licensees benefit from this chapter. The chapter clarifies when an architect is needed to design or make alterations to a building. The chapter publicly establishes guidelines for the types of projects where architectural services are needed to provide for the health and safety of those who occupy buildings and interact in the built environment.

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

- Quantitative description of impact:

The Board believes that the benefits achieved justify the costs because the chapter clarifies when an architect is needed to design or make alterations to a building to ensure the public safety and welfare in the built environment. Costs to the public would include fees paid to an architect or architectural firm; the costs vary depending on the size and complexity of the project. If architecture were not regulated, it could mean that less-skilled individuals would design buildings that may not meet safety standards. Architecture is regulated in all 50 states.

Licensees bear costs in the form of licensing fees and compliance.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

The chapter establishes guidelines for the types of projects where architectural services are needed to provide for the health and safety of those who occupy buildings and interact in the built environment.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes oversight, questions from licensees and the public, administration of Board meetings, etc. Shared staff at approximately 0.5 full-time equivalent (FTE) position support the entirety of the work of the Board. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact to state revenues as a result of this rulemaking.

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

Establishing requirements for architectural services ensures safety for the public. The cost of inaction would increase the potential for injury to the public.

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

Costs to the public would include fees paid to an architect or architectural firm; the costs vary depending on the size and complexity of the project. However, the costs to use architectural services have the benefit of ensuring safe buildings. The Board recognizes that there are costs associated with the requirements but is unable to assess the actual cost.

Minnesota and Nebraska's requirements are similar to those in Iowa and in some cases are more stringent.

6. Alternative methods considered by the agency:

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

Statute provides that the practice of architecture affects the public's health, safety, and welfare. Statute allows for exemptions to using architectural services on six occasions. The rules in Chapter 5 provide guidance to the public, especially laypeople and building code officials, as to when the services of an architect are needed. Neighboring states have similar regulations.

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

Statute provides that the practice of architecture affects the public's health, safety, and welfare. Statute allows for exemptions to using architectural services on six occasions. The rules in Chapter 5

provide guidance to the public, especially laypeople and building code officials, as to when the services of an architect are needed. Neighboring states have similar regulations.

Small Business Impact

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

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

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for architects. While some architects likely are running a small business of their own, some also work for large organizations. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193B—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5 EXCEPTIONS

193B—5.1(544A) Definitions. The following definitions apply as used in Iowa Code chapter 544A and this chapter of the architectural examining board rules.

“*Accessory buildings*” means a building or structure of an accessory character and miscellaneous structures not classified in any specific occupancy or use. “Accessory buildings” are constructed, equipped and maintained to conform to the requirements corresponding to the fire and life hazard incidental to the buildings’ occupancy. “Accessory buildings” is intended to encompass the uses listed in Group U of the 2015 International Building Code®.

“*Agricultural building*” means a structure designed to house farm implements, hay, grain, poultry, livestock or other agricultural products. For the purpose of this definition, this structure does not contain habitable space or a place of employment where agricultural products are processed or treated or packaged; nor will it be a place used by the public.

“*Alter*” or “*alteration*” means any change, addition or modification to an existing building in its construction or occupancy.

“*Church*” means a building or portion thereof intended for the performance of religious services.

“*Commercial*” or “*commercial use*” means the following:

1. The use of a building or structure, or a portion thereof, for office, professional, or service-type transactions, including storage of records and accounts,

2. The use of a building or structure, or a portion thereof, for the display and sale of merchandise, and involves stocks of goods, including wares or merchandise incidental to such purposes and accessible to the public.

“Commercial use” is intended to encompass the uses listed in Group B and Group M of the 2015 International Building Code®.

“*Detached*” means a structure separated by distance and not connected to another structure.

“*Dwelling unit*” means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“*Educational use*” means the use of a building or structure, or a portion thereof used (1) by six or more persons at any one time for education purposes through twelfth grade; or (2) by six or more children for day care purposes. Rooms and spaces within places of religious worship providing such day care during religious functions and day cares serving five or fewer children are classified as part of the primary occupancy. “Educational use” is intended to encompass the uses listed in Group E of the 2015 International Building Code®.

“*Factory-built buildings*” means any structure which is, wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, on a building site. “Factory-built buildings” includes the terms “mobile home,” “manufactured home,” and “modular home.”

“*Family dwelling unit*” means the same as “dwelling unit.”

“*Gross floor area*” means the area included within the surrounding exterior walls of a building. Areas of the building not provided with surrounding walls are included in the building area if such areas are included within the horizontal projection of the supporting structure of the roof or floor above.

“*Habitable space (room)*” means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered “habitable space.”

“*Hazardous use*” means the use of a building or structure, or a portion thereof, which involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard. “Hazardous use” is intended to encompass the uses listed in Group H of the 2015 International Building Code®.

“*Industrial use*” means the use of a building or structure, or a portion thereof, for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair, or processing operations that are not classified as hazardous use. “Industrial use” is intended to encompass the uses listed in Group F of the 2015 International Building Code®.

“*Institutional use*” means the use of a building or structure, or a portion thereof, in which persons are receiving custodial or medical care, in which persons are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Day care facilities as defined in educational use are not considered institutional uses. “Institutional use” is intended to encompass the uses listed in Group I of the 2015 International Building Code®. Facilities with five or fewer persons receiving custodial care may be considered a residential use or be considered part of the primary occupancy as listed in Group I of the 2015 International Building Code®.

“*International Building Code*” is a model building code developed by the International Code Council. The 2015 International Building Code® is available from the state library of Iowa or the board or online at codes.iccsafe.org.

“*Light industrial*” means buildings not more than one story in height and not exceeding 10,000 square feet in gross floor area that involve fabrication or manufacturing of noncombustible materials which, during finishing, packing, or processing, are not classified as hazardous use.

“*Mixed building use*” means a building containing more than one use classification.

“*Nonstructural alterations*” means modifications to an existing building which do not include any changes to structural members of a building, or do not modify means of egress, handicap accessible routes, fire resistivity or other life safety concerns.

“*Occupancy*” means a purpose for which a building, or part thereof, is used or intended to be used.

“*Outbuildings*” means the same as “accessory buildings.”

“Place of assembly of people or public gathering” means the use of a building or structure, or a portion thereof, for the gathering of persons such as for civic, social, or religious functions; recreation, food or drink consumption; or awaiting transportation. “Place of assembly of people or public gathering” is intended to encompass the uses listed in Group A of the 2015 International Building Code®. Places of assembly with occupancy of fewer than 50 people are considered part of the primary occupancy.

“Residential use” means the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an institutional use. “Residential use” is intended to encompass the uses listed in Group R of the 2015 International Building Code®.

“Story” means that portion of a building included between the upper surface of any floor and the upper surface of the floor or roof next above.

“Structural members” consists of building elements which carry an imposed load of weight and forces in addition to their own weight including, but not limited to, loads imposed by forces of gravity, wind, and earthquake. Structural members include, but are not limited to, footings, foundations, columns, load-bearing walls, beams, girders, purlins, rafters, joists, trusses, lintels, and lateral bracing.

“Use” means the same as “occupancy.”

“Warehouses” or *“warehouse use”* means the use of a building or structure, or portion thereof, for storage that is not classified as a hazardous use. “Warehouse use” is intended to encompass the uses listed in Group S of the 2015 International Building Code®.

193B—5.2(544A) Exceptions. An architect licensed in this state is required to perform professional architectural services for all buildings except those listed in Iowa Code section 544A.18.

193B—5.3(544A) Building use. The following criteria are used when applying the exceptions outlined in Iowa Code section 544A.18 and rule 193B—5.2(544A):

5.3(1) Building use takes priority over size. In all cases, the use of the building takes priority over the size. For example, a place of assembly is not a commercial use, and would not constitute an exception even if the building is not more than one story in height and does not exceed more than 10,000 square feet in gross floor area.

5.3(2) Mixed building use. In the case that a building contains more than one use, the most stringent use is applied to the entire building when applying the exceptions. For example, a two-story building containing a 6,000 square foot commercial space as well as 6,000 square feet of residential space on the second floor would be considered a 12,000 square foot, two-story commercial building for the purposes of the exception matrix.

5.3(3) Agricultural buildings. Activities inherent to housing farm implements, farm inputs, farm products, and livestock or other agricultural products, such as recordkeeping, sanitation, storage of farm inputs, or equipment preparation, repair, or modifications, are not to be construed as a use in and of itself for the purposes of applying the exceptions. For example, welding operations to repair an implement or grain-handling equipment would not trigger the consideration of an agricultural building or a portion of the building as an industrial use.

5.3(4) Churches and accessory buildings. When under the height and gross floor area noted in the exception and encompassing uses inherent to a church or an accessory building as defined, these buildings are exempted, even if the use within the building would normally not be exempted. For example, a church used as a place of assembly with occupancy of more than 50 people but still under the height and gross floor area noted would still be exempted even though the occupancy would place the building in the nonexempted category.

193B—5.4(544A) Exceptions matrix. The following matrix is compiled to illustrate the exceptions outlined in Iowa Code section 544A.18. The laws and rules governing the Practice of Engineering are not illustrated herein.

| BUILDINGS NEW CONSTRUCTION | | | |
|--|--|-------------------------------|--|
| Building Use Type | Description | Architect Required | Architect May Not Be Required |
| Agricultural use | Including grain elevators and feed mills | | X |
| Churches and accessory buildings whether attached or separate | One or two stories in height, up to a maximum of 2,000 square feet in gross floor area | | X |
| | Any number of stories in height, greater than 2,000 square feet in gross floor area | X | |
| | More than two stories in height | X | |
| Commercial use | One story in height, up to a maximum of 10,000 square feet in gross floor area | | X |
| | One story in height, greater than 10,000 square feet in gross floor area | X | |
| | Two stories in height, up to a maximum of 6,000 square feet in gross floor area | | X |
| | Two stories in height, greater than 6,000 square feet of gross floor area | X | |
| | More than two stories in height | X | |
| Detached residential use | One, two or three stories in height, containing 12 or fewer family dwelling units | | X |
| | More than 12 family dwelling units | X | |
| | More than three stories in height | X | |
| | Outbuildings in connection with detached residential buildings | | X |
| Educational use | | X | |
| Hazardous use | | X | |
| Industrial use | | X | |
| Institutional use | | X | |
| Light industrial use | | | X |
| Places of assembly | | X | |
| Warehouse use | One story in height, up to a maximum of 10,000 square feet in gross floor area | | X |
| | One story in height, greater than 10,000 square feet in gross floor area | X | |
| | More than one story in height | X | |
| Factory-built buildings | Any height and size, if certified by a professional engineer licensed under Iowa Code chapter 542B | | X |
| | One or two stories in height, up to a maximum of 20,000 square feet in gross floor area | | X |
| | One or two stories in height, greater than 20,000 square feet in gross floor area | X | |
| | More than two stories in height | X | |
| | More than 20,000 square feet in gross floor area | X | |

| ALTERATIONS TO EXISTING BUILDINGS | | | | |
|---|--|--|--|---|
| Alteration Type | Description | Architect Required | Architect May Not Be Required | |
| Structural alterations to exempt buildings | Modifications which change the structural members, means of egress, handicap accessible path, fire resistivity or other life safety concerns | | X | |
| Structural alterations to nonexempt buildings | Modifications which change the structural members, means of egress, handicap accessible path, fire resistivity or other life safety concerns | X | | |
| Nonstructural alteration | Which does not modify means of egress, handicap accessible path, fire resistivity or other life safety concerns | | X | |
| | Which maintains the previous type of use | | X | |
| Nonstructural alteration which changes the use of the building from any other use to: | A place of assembly of people or public gathering | X | | |
| | Educational use | X | | |
| | Hazardous use | X | | |
| | Residential use exempted | and is one, two or three stories in height and contains not more than 12 family dwelling units | | X |
| | Residential use not exempted otherwise | and is more than three stories in height | X | |
| and containing more than 12 family dwelling units | | X | | |
| Nonstructural alterations which change the use of the building from industrial or warehouse to: | Commercial or office use | and is one story in height and not greater than a maximum of 10,000 square feet in gross floor area | | X |
| | | and is one story in height and greater than 10,000 square feet in gross floor area | X | |
| | | and is two stories in height and not greater than a maximum of 6,000 square feet in gross floor area | | X |
| | | and is two stories in height and greater than 6,000 square feet in gross floor area | X | |
| | | and is more than two stories in height | X | |
| | | and is greater than 10,000 square feet of gross floor area | X | |
| Nonstructural alterations to: | Agricultural use | Including grain elevators and feed mills | | X |
| | Churches and accessory building uses | One or two stories in height, up to a maximum of 2,000 square feet in gross floor area | | X |
| | | Any number of stories in height, greater than 2,000 square feet in gross floor area | X | |
| | | More than two stories in height | X | |
| | Commercial use | One story in height, up to a maximum of 10,000 square feet in gross floor area | | X |
| | | One story in height, greater than 10,000 square feet in gross floor area | X | |
| | | Two stories in height, up to a maximum of 6,000 square feet in gross floor area | | X |
| | | Two stories in height, greater than 6,000 square feet in gross floor area | X | |
| | | More than two stories in height | X | |
| | Detached residential buildings | One, two or three stories in height, containing 12 or fewer family dwelling units | | X |
| | | More than 12 family dwelling units | X | |
| More than three stories in height | | X | | |

| ALTERATIONS TO EXISTING BUILDINGS | | | | |
|--------------------------------------|-------------------------|--|---|---|
| | | Outbuildings in connection with detached residential buildings | | X |
| | Educational use | | X | |
| | Hazardous use | | X | |
| | Industrial use | | X | |
| | Institutional use | | X | |
| | Light industrial use | | | X |
| | Places of assembly | | X | |
| | Warehouse use | One story in height, up to a maximum of 10,000 square feet in gross floor area | | X |
| | | One story in height, greater than 10,000 square feet in gross floor area | X | |
| | | More than one story in height | X | |
| | Factory-built buildings | Any height and size if entire building is certified by a professional engineer licensed under Iowa Code chapter 542B | | X |
| | | One or two stories in height, up to a maximum of 20,000 square feet of gross floor area | | X |
| | | One or two stories in height, greater than 20,000 square feet in gross floor area | X | |
| | | More than two stories in height | X | |
| | | More than 20,000 square feet in gross floor area | X | |

These rules are intended to implement Iowa Code section 544A.18.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193B—Chapter 6
“Disciplinary Action Against Licensees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C.3, 272C.4, 272C.5, 544A.5, and 544A.29

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 272C, and 544A

Public Hearing

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

November 21, 2023
3:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Architectural Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

Proposed Chapter 6 provides Iowans, licensees, and their employers with information about the disciplinary process and possible actions against licensed architects. The public knows that the Board can take disciplinary action for violations of the Board’s rules. The public has the ability to submit a complaint to the Board who can then investigate the allegation. The Board has the ability to seek discipline against the licensee ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Costs are not generally incurred by the public.

Licensees are responsible for costs associated with disciplinary actions. Civil penalties are capped at \$1,000 per instance.

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

The intended benefit of this chapter is to ensure public safety and maintain a high level of service for Iowans. The Board receives a low number of complaints and takes few disciplinary actions. In fiscal year 2023, the Board received 20 complaints and issued one public disciplinary action. There are approximately 2,637 licensed architects in the state of Iowa.

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

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because architecture is a profession that requires knowledge, training, and skill.

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates professional standards.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates applicable rules or laws. Shared staff at approximately 0.5 full-time equivalent (FTE) position support the entirety of the work of the Board. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are minimal.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees, not the State. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In fiscal year 2023, a total of \$25,500 was paid to the General Fund by disciplinary fees assessed by the Board.

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

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because architecture is a profession that requires knowledge, training, and skill. In fiscal year 2023, the Board opened 20 complaints and issued one public disciplinary action. There are approximately 2,640 licensed architects in the state of Iowa. While a low number of complaints can call into question the extent to which a profession needs to be regulated, architecture is a profession that requires a high level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
The Board has not identified any other alternatives to these disciplinary rules.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The Board has not identified any other alternatives to these disciplinary rules.

Small Business Impact

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

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

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for architects. While some architects likely are running a small business of their own, some also work for large organizations. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193B—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6 DISCIPLINARY ACTION AGAINST LICENSEES

193B—6.1(544A,272C) Disciplinary action. The architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—6.2(544A,272C) Investigation of complaints. The board will, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the chairperson will investigate the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board may take no further action.

193B—6.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the chairperson to investigate a complaint. The committee members will consist of one or more architects who have been licensed to practice in Iowa for at least five years, serving at the discretion of the chairperson. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

193B—6.4(544A,272C) Investigation report. Upon completion of the investigation, the investigator(s) will prepare for the board's consideration a report containing the position or defense of the licensee to determine what further action is necessary. The board may:

1. Order the matter be further investigated.
2. Allow the licensee who is the subject of the complaint an opportunity to appear before a committee of the board for an informal discussion regarding the circumstances of the alleged violation.
3. Determine there is no probable cause to believe a disciplinary violation has occurred and close the case.
4. Determine there is probable cause to believe that a disciplinary violation has occurred.

193B—6.5(544A,272C) Informal discussion. If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. The licensee is not required to attend the informal discussion.

Unless disqualification is waived by the licensee, board members who personally investigated a disciplinary complaint are disqualified from making decisions at a later formal hearing. Because board members generally rely upon staff, investigators, auditors, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making, licensees who desire to attend an informal discussion will therefore waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges will be filed simultaneously with the consent order.

193B—6.6(544A,272C) Decisions. The board will make findings of fact and conclusions of law and may take one or more of the following actions:

- 6.6(1)** Dismiss the charges.
- 6.6(2)** Revoke the architect's license.
- 6.6(3)** Suspend the licensee's license as authorized by law.
- 6.6(4)** Impose civil penalties, not to exceed \$1,000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code sections 544A.13 and 544A.15 and these rules. Factors the board may consider when determining whether to assess civil penalties and the amount to assess include:
 - a. Whether other forms of discipline are being imposed for the same violation.
 - b. Whether the amount imposed will be a substantial deterrent to the violation.
 - c. The circumstances leading to the violation.
 - d. The severity of the violation and the risk of harm to the public.
 - e. The economic benefits gained by the licensee as a result of the violation.
 - f. The interest of the public.
 - g. Evidence of reform or remedial action.
 - h. Time lapsed since the violation occurred.
 - i. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.

- j.* The clarity of the issues involved.
- k.* Whether the violation was willful and intentional.
- l.* Whether the licensee acted in bad faith.
- m.* The extent to which the licensee cooperated with the board.
- n.* Whether the licensee practiced architecture with a lapsed, inactive, suspended or revoked certificate of licensure.

6.6(5) Impose a period of probation, either with or without conditions.

6.6(6) Require reexamination, using one or more parts of the examination given to architectural licensee candidates.

6.6(7) Require additional professional education, reeducation, or continuing education.

6.6(8) Issue a citation and a warning.

6.6(9) Issue a consent order.

193B—6.7(544A,272C) Voluntary surrender. Voluntary surrender of licensure is considered as disciplinary action. The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board will not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such voluntary surrender is considered disciplinary action and will be published in the same manner as is applicable to any other form of disciplinary order.

These rules are intended to implement Iowa Code section 544A.13 and chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193B—Chapter 7
“Disciplinary Action—Unlicensed Practice”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C.3, 272C.4, 272C.5, 544A.5, and 544A.29

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 272C, and 544A

Public Hearing

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

November 21, 2023
3:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Architectural Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

Proposed Chapter 7 provides Iowans with information about the disciplinary process and possible actions against those who practice architecture without a license. The public knows that the Board can take disciplinary action for violations of the Board’s rules. The public has the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline for unlicensed practice ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Costs are not generally incurred by the public.

Those who have been found to have practiced without a license are responsible for costs associated with disciplinary actions, which include civil penalties and may include a \$75 hearing fee.

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

The intended benefit of this chapter is to ensure public safety and maintain a high level of service for Iowans. The Board receives a low number of complaints and takes few disciplinary actions. In fiscal year 2023, the Board opened eight complaints of individuals practicing architecture without an active license.

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

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because architecture is a profession that requires knowledge, training, and skill. Those who are not licensed pose a threat to public safety.

The Board has not identified a less restrictive alternative to public protection. The Board believes that these requirements are important in order to ensure the safety of Iowans.

- Qualitative description of impact:

Imposing discipline on individuals practicing architecture without a license ensures safety for the profession and the consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against unlicensed individuals.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when an individual is alleged to be practicing architecture without a license. Shared staff at approximately 0.5 full-time equivalent (FTE) position support the entirety of the work of the Board. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are minimal.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because architecture is a profession that requires knowledge, training, and skill. In fiscal year 2023, the Board opened eight complaints of individuals practicing architecture without an active license. While a low number of complaints can call into question the extent to which a profession needs to be regulated, architecture is a profession that requires a high level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection.

6. Alternative methods considered by the agency:

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

The Board has not identified any other alternatives to these disciplinary rules.

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

The Board has not identified any other alternatives to these disciplinary rules.

Small Business Impact

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

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

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for architects. While some architects likely are running a small business of their own, some also work for large organizations. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193B—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
DISCIPLINARY ACTION—UNLICENSED PRACTICE

193B—7.1(544A,272C) Disciplinary action. The architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—7.2(544A,272C) Investigation of complaints. The board will, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the chairperson will investigate the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board may take no further action.

193B—7.3(544A) Civil penalties against unlicensed person. The board may impose civil penalties by order against a person who is not licensed as an architect pursuant to Iowa Code chapter 544A based on the unlawful practices specified in Iowa Code section 544A.15(3). In addition to the procedures set forth in Iowa Code section 544A.15(3), this rule applies.

7.3(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 544A.15(3) may be served upon the unlicensed person by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the unlicensed person may accept service personally or through authorized counsel. The notice includes the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. Reference to the particular sections of the statutes and rules involved.

- c.* A short, plain statement of the alleged unlawful practices.
- d.* The dollar amount of the proposed civil penalty.
- e.* Notice of the unlicensed person's right to a hearing and the time frame in which a hearing is requested.

f. The address to which written request for hearing is made.

7.3(2) Unlicensed persons need to request a hearing in writing within 30 days of the date the notice is mailed, if served through restricted certified mail to the last-known address, or within 30 days of the date of service, if service is accepted or made in accordance with Rule of Civil Procedure 1.305. A request for hearing is deemed made on the date of the United States Postal Service postmark or the date of personal service.

7.3(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

7.3(4) If a request for hearing is timely made, the board issues a notice of hearing and conducts a hearing in the same manner as applicable to disciplinary cases against licensed architects.

7.3(5) In addition to the factors set forth in Iowa Code section 544A.15(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

- a.* The time lapsed since the unlawful practice occurred.
- b.* Evidence of reform or remedial actions.
- c.* Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
- d.* Whether the violation involved an element of deception.
- e.* Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
- f.* The clarity of the issue involved.
- g.* Whether the violation was willful and intentional.
- h.* Whether the unlicensed person acted in bad faith.
- i.* The extent to which the unlicensed person cooperated with the board.

7.3(6) An unlicensed person may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

7.3(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Architectural Registration Boards, and other entities. Hearings are open to the public.

These rules are intended to implement Iowa Code section 544A.15.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 1
“Administration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The purpose of this chapter is to inform Iowans of the structure and functionality of the Engineering and Land Surveying Examining Board, plus guidance on building situations where a professional engineer may be needed.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The agency bears the cost of Board meetings in the way of \$50 per diem per board member, per meeting, plus travel expenses as needed. Travel expenses in 2022 were approximately \$500. Staff

salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The intended benefit is to inform the licensees and the public on the structure and functionality of the Board.

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

- Quantitative description of impact:

There are no costs to the public. The expenses of the Board, per diem and travel reimbursement, are paid by the agency, which is funded by licensing fees. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Iowans are protected by the laws of professional licensing. The Board ensures minimum standards for licensing and resolves complaints against licensees.

3. Costs to the State:

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

Costs to the agency are staff time needed to manage Board activities, and to pay the Board members \$50 per diem per Board member, per meeting, and reimburse travel expenses. Travel reimbursements for Board meetings in 2022 were approximately \$500.

- Anticipated effect on state revenues:

There is not a significant impact to state revenues by this chapter. Staff salaries are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

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

Eliminating the Board would have an unnoticeable impact on state revenues. The Board believes all current requirements ensure public safety and ensure a minimum competency, which serves to protect Iowans.

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

Less restrictive alternatives would dilute the protection of the public. Reducing the nominal pay to the Board or reducing/eliminating travel expense reimbursement may serve to also reduce the interest of individuals to sit on the licensing board.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board. These rules offer the public helpful information regarding the structure of the Board. While the Board is not inclined at this time to make changes, it will consider evidence for future review.

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

Licensing and regulation is required by Iowa Code chapter 542B. The rules support the law.

Small Business Impact

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

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

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

Iowa does not license engineering or land surveying firms. Therefore, the rulemaking will not directly or substantially impact small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 1 and adopt the following new chapter in lieu thereof:

CHAPTER 1
ADMINISTRATION

193C—1.1(542B) General statement. The practices of engineering and land surveying affect the life, health, and property of the people in Iowa. The engineering and land surveying examining board's principal mandate is the protection of the public interest.

1.1(1) Administration. Administration of the board has not been separated into panels, divisions, or departments. While the expertise of a board member may be called upon to frame special examinations and evaluate applications for licensing in a specialized engineering branch, the board functions in a unified capacity on all matters that may come before it. The board maintains an office at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, and requests or submissions may be directed to the secretary of the board at that location.

1.1(2) Meetings. Regular meetings of the board are held in Des Moines, Iowa. Information concerning the location and dates for meetings may be obtained from the board's office at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, or by telephoning 515.725.9022.

193C—1.2(542B) Definitions. For the purposes of these rules, the following definitions apply:

"Accredited" means a program accredited by the Accreditation Board for Engineering Technology, Inc. (ABET) or the Canadian Engineering Accreditation Board (CEAB) or another accrediting body accepted by the National Council of Examiners for Engineering and Surveying (NCEES).

"Board" means the engineering and land surveying examining board provided by chapter 542B of the Iowa Code.

"Design coordination" means the same as defined in Iowa Code section 542B.2(2).

"Engineering documents" means the same as defined in Iowa Code section 542B.2(4).

"Engineering survey," as used in the definition of the practice of engineering, includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but excludes the survey of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land system.

"Engineer intern" means the same as defined in Iowa Code section 542B.2(3).

"In responsible charge" means the same as defined in Iowa Code section 542B.2(6).

“*Land surveying documents*” means the same as defined in Iowa code section 542B.2(7).

“*Practice of engineering*” means the same as defined in Iowa Code section 542B.2(9) “a” and “b.”

1. The practice of engineering includes:

- Environmental engineering activities which may be involved in developing plans, reports, or actions to remediate an environmentally hazardous site;
- Design of fixturing devices for manufacturing machinery that must be performed by a licensed professional engineer or under the responsible charge and direct supervision of a professional engineer unless performed within the industrial exemption by a full-time employee of a corporation which constructs the fixtures.

2. Activities that the board will construe as the practice of engineering for which the board may by order impose a civil penalty upon a person who is not licensed as a professional engineer are set out in Iowa Code section 542B.27.

“*Practice of land surveying*” means the same as defined in Iowa Code section 542B.2(10) and also includes activities that the board will construe as the practice of land surveying and for which the board may by order impose a civil penalty upon a person who is not licensed as a professional land surveyor as set out in Iowa Code section 542B.27.

“*Professional engineer*” means the same as defined in Iowa Code section 542B.2(11).

“*Professional land surveyor*” means a person who engages in the practice of land surveying as defined in this rule.

“*Written,*” when used to describe an examination, means a computer-based format.

193C—1.3(542B) Declaratory orders. The board’s rules regarding declaratory orders can be found in the uniform rules for the division of professional licensing and regulation at 193—Chapter 10.

193C—1.4(542B) Waivers.

1.4(1) The board’s rules regarding waivers can be found in the uniform rules for the division of professional licensing and regulation at 193—Chapter 5.

1.4(2) Interim rulings. The board chairperson, or vice chairperson if the chairperson is not available, may rule on a petition for waiver when it would not be timely to wait for the next regularly scheduled board meeting for a ruling from the board.

a. The executive secretary shall, upon receipt of a petition meeting all applicable criteria established in 193—Chapter 5, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

b. The chairperson or vice chairperson shall reserve the right to hold an electronic meeting of the board when:

(1) Board precedent does not clearly resolve the request and the input of the board is deemed required; and

(2) The practical result of waiting until the next regularly scheduled meeting would be a denial of the request due to timing issues.

c. A waiver report will be placed on the agenda of the next regularly scheduled board meeting and recorded in the minutes of the meeting.

d. This subrule on interim rulings does not apply if the waiver was filed in a contested case.

193C—1.5(542B) Licensed professional engineers and building construction.

1.5(1) Purpose. This rule is intended to provide guidance to licensed professional engineers, other design professionals, unlicensed persons engaged in various aspects of building construction, building officials, owners, and others on when the services of a licensed professional engineer are required or not in connection with new building construction and alterations to existing structures.

1.5(2) General guidelines. Given the wide range of buildings covered by this rule and the unique issues which may arise with respect to specific buildings, it is not possible to establish definitive criteria which will universally resolve when building construction or alterations will or will not implicate the practice of professional engineering, as defined in Iowa Code sections 542B.2(8) and 542B.27(1). For

example, while the construction of a single-family residence would not generally necessitate the services of a licensed professional engineer, unique or unconventional features of a particular site or design may necessitate complex structural calculations or other services which fall within the definition of professional engineering. As a result, this rule should be interpreted as providing only general guidelines on when a licensed professional engineer is necessary.

1.5(3) Applicability. The board will consider the guidelines provided in this rule when enforcing Iowa Code chapter 542B, including when determining whether an unlicensed person has engaged in the practice of professional engineering. This rule is not intended to constrain building officials or other public officials in their enforcement of other laws, rules, regulations or ordinances. A building code official, for example, may require that certain documents be prepared by a licensed professional engineer or that certain construction inspections be performed by a licensed professional engineer whether or not the guidelines in this rule would so require. This rule only addresses the practice of professional engineering and does not address the practice of architecture. Similar guidelines with respect to the practice of architecture may be found at 193B—Chapter 5.

1.5(4) Definitions. The definitions set forth in 193B—5.1(544A) apply to this rule.

1.5(5) Guidelines for new construction. The following matrix describes by building type and use when the services of a licensed professional engineer are required in connection with new building construction:

| BUILDINGS NEW CONSTRUCTION | | | |
|---|---|------------------------------|---|
| Building Use Type | Description | Engineer Required | Engineer May Not Be Required |
| Agricultural Use | Facilities for private use only and individually owned and operated facilities including grain elevators and feed mills | | X |
| | Corporate-owned facilities or publicly owned facilities including grain elevators and feed mills | X | |
| Churches and accessory buildings whether attached or separate | One or two stories in height, up to a maximum of 2,000 square feet in gross floor area | | X |
| | Any number of stories in height, greater than 2,000 square feet in gross floor area | X | |
| | More than two stories in height | X | |
| Commercial Use | One story in height, up to a maximum of 10,000 square feet in gross floor area | | X |
| | One story in height, greater than 10,000 square feet in gross floor area | X | |
| | Two stories in height, up to a maximum of 6,000 square feet in gross floor area | | X |
| | Two stories in height, greater than 6,000 square feet in gross floor area | X | |
| | More than two stories in height | X | |
| Detached Residential Use | One, two or three stories in height, containing 12 or fewer family dwelling units | | X |
| | More than 12 family dwelling units | X | |
| | More than three stories in height | X | |
| | Outbuildings in connection with detached residential buildings | | X |
| Educational Use | | X | |

| BUILDINGS NEW CONSTRUCTION | | | |
|---------------------------------------|--|------------------------------|---|
| Building Use Type | Description | Engineer Required | Engineer May Not Be Required |
| Governmental Use | When the occupancy is of another building use type listed herein, those provisions shall apply | X | |
| Industrial Use | | X | |
| Institutional Use | | X | |
| Light Industrial Use | | | X |
| Places of assembly | | X | |
| Warehouse Use | One story in height, up to a maximum of 10,000 square feet in gross floor area | | X |
| | One story in height, greater than 10,000 square feet in gross floor area | X | |
| | More than one story in height | X | |
| Factory-Built Buildings | One or two stories in height, up to a maximum of 20,000 square feet in gross floor area | | X |
| | One or two stories in height, greater than 20,000 square feet in gross floor area | X | |
| | More than two stories in height | X | |
| | More than 20,000 square feet in gross floor area | X | |

1.5(6) *Guidelines for alterations to existing buildings.* The following matrix describes by alteration type when the services of a licensed professional engineer are required in connection with alterations to existing buildings:

| ALTERATIONS TO EXISTING BUILDINGS | | | |
|--|--|------------------------------|---|
| Alteration Type | Description | Engineer Required | Engineer May Not Be Required |
| Structural alterations to exempt buildings under Iowa Code section 544A.18 | Modifications which change the structural members, means of egress, handicap accessible path, fire resistivity or other life safety concerns | | X |
| Structural alterations to buildings that are not exempt | Modifications which change the structural members, means of egress, handicap accessible path, fire resistivity or other life safety concerns | X | |
| Nonstructural alteration | Which does not modify means of egress, handicap accessible path, fire resistivity or other life safety concerns | | X |

| ALTERATIONS TO EXISTING BUILDINGS | | | | |
|---|---|--|----------------------|---------------------------------------|
| Alteration Type | Description | | Engineer Required | Engineer May Not Be Required |
| | Which maintains the previous type of use | | | X |
| Nonstructural alteration which changes the use of the building from any other use to: | A place of assembly of people or public gathering | | X | |
| | Governmental use | | X | |
| | Educational use | | X | |
| | Hazardous use | | X | |
| | A place of residence exempted | and is one, two or three stories in height and contains not more than 12 family dwelling units | | X |
| | A place of residence not exempted otherwise | and is more than three stories in height | X | |
| and containing more than 12 family dwelling units | | X | | |
| Nonstructural alterations which change the use of the building from industrial or warehouse to: | Commercial or office use | and is one story in height and not greater than a maximum of 10,000 square feet in gross floor area | | X |
| | | and is one story in height and greater than 10,000 square feet in gross floor area | X | |
| | | and is two stories in height and not greater than a maximum of 6,000 square feet in gross floor area | | X |
| | | and is two stories in height and greater than 6,000 square feet in gross floor area | X | |
| | | and is more than two stories in height | X | |
| | | and is greater than 10,000 square feet of gross floor area | X | |
| Nonstructural alterations to: | Agricultural Use | Including grain elevators and feed mills | | X |
| | Churches and Accessory Building Uses | One or two stories in height, up to a maximum of 2,000 square feet in gross floor area | | X |
| | | Any number of stories in height, greater than 2,000 square feet in gross floor area | X | |
| | | More than two stories in height | X | |
| | Commercial Use | One story in height, up to a maximum of 10,000 square feet in gross floor area | | X |
| | | One story in height, greater than 10,000 square feet in gross floor area | X | |
| | | Two stories in height, up to a maximum of 6,000 square feet in gross floor area | | X |
| | | Two stories in height, greater than 6,000 square feet in gross floor area | X | |
| | | More than two stories in height | X | |
| | Detached Residential Buildings | One, two or three stories in height, containing 12 or fewer family dwelling units | | X |
| More than 12 family dwelling units | | X | | |

| ALTERATIONS TO EXISTING BUILDINGS | | | | | |
|--------------------------------------|---|--|-------------------|------------------------------|---|
| Alteration Type | Description | | Engineer Required | Engineer May Not Be Required | |
| | | More than three stories in height | X | | |
| | | Outbuildings in connection with detached residential buildings | | X | |
| | Educational Use | | X | | |
| | Governmental Use | When the occupancy is of another building use type listed herein, those provisions shall apply | X | | |
| | Industrial Use | | X | | |
| | Institutional Use | | X | | |
| | Light Industrial Use | | | X | |
| | Places of Assembly | | X | | |
| | Warehouse Use | One story in height, up to a maximum of 10,000 square feet in gross floor area | | | X |
| | | One story in height, greater than 10,000 square feet in gross floor area | X | | |
| | | More than one story in height | X | | |
| Factory-Built Buildings | One or two stories in height, up to a maximum of 20,000 square feet of gross floor area | | | X | |
| | One or two stories in height, greater than 20,000 square feet in gross floor area | X | | | |
| | More than two stories in height | X | | | |
| | More than 20,000 square feet in gross floor area | X | | | |

1.5(7) Architectural exceptions do not apply. The statutory exemptions in Iowa Code section 544A.18 do not apply to the practice of engineering. The construction of a building that falls within an exception in Iowa Code section 544A.18 may necessitate the services of an engineer if, for example:

a. There are structural elements which do not fall within building code definitions of conventional light frame construction,

b. The use of certain structural materials, members or components requires special inspections by engineers, or

c. HVAC, plumbing or electrical systems exceed certain building code standards. However, the matrix guidelines in this rule are generally compatible with the exceptions in Iowa Code section 544A.18 because the construction of buildings that fall outside the exceptions in Iowa Code section 544A.18 generally does implicate the practice of professional engineering in such disciplines as structural, electrical or mechanical engineering.

These rules are intended to implement Iowa Code sections 17A.9A, 542B.2, and 542B.3.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 2
“Fees and Charges”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The purpose of proposed Chapter 2 is to provide applicants with detailed information regarding the fees and charges associated with acquiring and maintaining an engineer or land surveyor license.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost to acquire and maintain a license is levied upon the licensees.
 - Classes of persons that will benefit from the proposed rulemaking:

Current and future licensees will benefit by knowing the various costs associated with an engineer and land surveyor license.

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

- Quantitative description of impact:

Licensing fees vary from state to state. From the data available, Iowa's licensing fees are in line with those of neighboring states.

- Qualitative description of impact:

The information in Chapter 2 captures fee information all in one place to aid individuals researching the cost to acquire and maintain a license.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to collect fees. Each business day, a ledger report is generated with updated calculations of fees collected. Staff salaries to support the work of the Engineering and Land Surveying Examining Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

The effect on state revenues is significant, approximately \$675,000 annually.

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

Reducing or eliminating fees would have a positive impact on licensees. Iowa has not raised any fees in over ten years, and its fees are in line with neighboring jurisdictions.

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

Reducing or eliminating fees would be less costly to the licensee. Intrusion is necessary in order to keep any fees in place.

6. Alternative methods considered by the agency:

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

Staff held discussions with the Board regarding all chapters of the Engineering and Land Surveying Examining Board[193C]. No alternative methods were considered.

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

Iowa's fees are in line with those of neighboring jurisdictions.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

Iowa does not license engineering or land surveying firms; therefore, the rulemaking will not directly or substantially impact small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
FEES AND CHARGES

193C—2.1(542B) General statement. Fees are fixed in such an amount as will defray the expense of administering board responsibilities. Fees are charged in accordance with the following table:

| Type of fee | Amount |
|--|--|
| Renewal | |
| Active license renewal | \$100 |
| Inactive license renewal | \$40 |
| Reinstatement of lapsed license (In addition to the reinstatement fee, the applicant for reinstatement must also pay the appropriate prorated reinstated license fee below.) | \$100 |
| Reinstatement of inactive to active license | \$60 |
| New or reinstated license (In addition to the appropriate prorated reinstated license fee, the applicant for reinstatement must also pay the reinstatement fee above.) | \$100 Prorated at six-month intervals |
| Application for examination | |
| Principles and Practice of Land Surveying | \$100 |
| Examinations | |
| Fees for NCEES examinations are paid directly to the examination service at the rate established by contract based upon cost of the examination materials and processing expenses. | Variable |
| Iowa State Specific Land Surveying Examination | \$30 |
| Application for licensure by comity or verification as a professional engineer or professional land surveyor | \$150 |
| Certificates | |
| Initial professional engineer or professional land surveyor certificate | \$15 |
| Additional or duplicate certificate | \$25 |
| Engineer or land surveyor intern certificate | No charge |
| Check returned for insufficient funds | \$15 |
| Verification of records for lapsed licensees | \$15 per verification |
| Late renewal fee (for renewals completed after December 31 and before January 31) | \$25 |

193C—2.2(542B) Nonrefundable fees. Application fees submitted with applications for the Fundamentals of Engineering examination, the Fundamentals of Land Surveying examination, the

Principles and Practice of Engineering examination, the Principles and Practice of Land Surveying examination, comity licensure, or renewal of licensure are not refundable for any reason.

These rules are intended to implement Iowa Code sections 542B.13, 542B.15, 542B.20 and 542B.30.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 3
“Application and Renewal Process”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The purpose of proposed Chapter 3 is to provide applicants with detailed information regarding the application and renewal process to acquire and maintain an engineer or land surveyor license.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost of application and renewal is levied upon the applicant.
 - Classes of persons that will benefit from the proposed rulemaking:
Future licensees will benefit from having information on the application process.

Future and current licensees will benefit from having information on the renewal process.

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

- Quantitative description of impact:

The economic impact of acquiring a license is covered in 193C—Chapters 4 and 5. The application fee for acquiring the license is \$100. The renewal fee is \$100 every two years for active licensure and \$40 every two years for inactive status. Colleges and universities often charge a fee for providing an official transcript, as is required by this rulemaking.

- Qualitative description of impact:

The primary impact of this rulemaking is to the Iowans who utilize engineering and land surveying services and are protected by the rules relating to becoming licensed. There is an additional impact on potential licensees, who may take into account these rules when deciding a career path.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to review applications to ensure compliance with the rules of Chapter 3 and needed to manage Engineering and Land Surveying Examining Board activities. The time needed to manage this provision is generally in the form of responding to questions related to the licensing and renewal process. An executive officer supports the full scope of work of this Board at approximately 0.30 full-time equivalent (FTE) position, which includes answering questions from the public and licensees. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

The anticipated effect on state revenues is moderate. Approximately \$60,000 per year is collected from application fees and about \$50,000 per year is collected from renewal fees.

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

Reducing or eliminating the annual \$100 application and/or renewal fee would impact the cost to the licensee. The Board has not raised renewal fees in over 15 years. Iowa's fees are consistent with those of other nearby jurisdictions.

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

Reducing the application fees would not impact the cost to the State to implement the renewal process. Intrusion is necessary in order to protect Iowans and visitors doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Because Iowa's renewal process is consistent with most other jurisdictions, no alternative methods were seriously considered.

Small Business Impact

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

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

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

Iowa does not license engineering or land surveying firms, so the rulemaking will not directly or substantially impact small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
APPLICATION AND RENEWAL PROCESS

193C—3.1(542B) General statement. A person requesting to be licensed as a professional engineer or professional land surveyor shall submit a completed, standardized application form, which may be obtained electronically from the board's Internet web page.

3.1(1) Application expiration. On the examination and comity applications due date, the applications are considered current if it has been one year or less since the applications were received by the board office.

3.1(2) Academic transcripts.

a. United States institutions. Completion of post-high school education shall be evidenced by the board's receipt of an applicant's transcripts directly from the office of the registrar of each institution conferring a qualifying degree.

b. Institutions outside the United States. Transcripts from institutions located outside the boundaries of the United States of America shall be sent directly from the institution to an evaluation service to be evaluated for authenticity and substantial equivalency with Accreditation Board for Engineering and Technology, Inc. (ABET), or Engineering Accreditation Commission (EAC) accredited engineering programs. To be readily acceptable, such evaluations shall be from the National Council of Examiners for Engineering and Surveying (NCEES). However, the board may accept evaluations from other recognized foreign credential evaluators satisfactory to the board. The expense of the evaluation is the responsibility of the applicant. Each evaluation shall be sent directly to the board from the evaluation service and include a copy of the transcript in the form sent to the evaluation service directly from the educational institution. Each evaluation must address both whether the transcript is authentic and whether the engineering program is equivalent to those accredited by ABET or EAC.

193C—3.2(542B) Application components and due dates.

3.2(1) Fundamentals of Engineering examination. Applications for the Fundamentals of Engineering examination are submitted directly to the examination service selected by the board to administer the examinations.

3.2(2) Fundamentals of Land Surveying examination application components and due dates. The components of this application include: the completed application form, references pursuant to 193C—paragraph 5.1(5) "b" and transcripts. Fundamentals of Land Surveying examination applications must be submitted to the board office. Applications submitted by the first day of each month will be reviewed by the board at the next regularly scheduled board meeting.

3.2(3) *Principles and Practice of Engineering examination application.* Principles and Practice of Engineering examination applications are submitted directly to the examination service selected by the board. Documentation of a qualifying degree will be required prior to approval to sit for the examination.

3.2(4) *Principles and Practice of Land Surveying application components and due dates.* Principles and Practice of Land Surveying examination applications are submitted to the board office. Application files with all components submitted to the board office by the first day of each month will be reviewed at the next regularly scheduled board meeting. The examination application file includes the following components: (a) the completed online application form, (b) the required number of references, (c) the project statement, and (d) the ethics questionnaire. In addition, a complete application file includes verification of examination records and transcripts. Examination applications will not be reviewed by the board until the application file is complete.

3.2(5) *Professional engineer license application.* Professional engineer license applications are submitted to the board office. Application files with all components submitted to the board office by the first day of each month will be reviewed at the next regularly scheduled board meeting. The professional engineer license application includes the following components: (a) the completed online application form, (b) the required number of references, (c) the project statement, and (d) the ethics questionnaire. In addition, a complete application file includes verification of examination records and transcripts. Professional engineer license applications will not be reviewed until the application file is complete.

193C—3.3(542B) Comity applications.

3.3(1) The components of a comity application include: the completed application form; the ethics questionnaire; references; transcripts; and verification of examinations, as appropriate. Comity applicants may submit the NCEES record in lieu of providing references, verifications, transcripts, and employment history. Since the verification of examination records must, in most cases, be sent directly from the jurisdiction where the applicant took the Fundamentals of Engineering and Principles and Practice Engineering examinations, the applicant should contact the other jurisdiction in advance of submitting the application to request this verification and make every effort to have the verification sent to the board at the time that the application is submitted. Likewise, for transcripts the applicant should contact the university in advance of submitting the application to make every effort to have the transcripts transmitted to the board at the time that the application is submitted.

3.3(2) Comity applications will be reviewed as they are completed. Comity applications will not be reviewed until all components have been received.

3.3(3) Comity applicants will be notified in writing via regular mail or email regarding the results of the review of their applications.

3.3(4) Temporary license. The board does not issue temporary licenses, except as provided for in rule 193C—5.3(542B,272C).

193C—3.4(542B) Renewal applications.

3.4(1) *Expiration dates.* Certificates of licensure expire biennially on December 31. Certificates that were initially issued in even-numbered years expire in odd-numbered years and certificates that were initially issued in odd-numbered years expire in even-numbered years. In order to maintain authorization to practice engineering or land surveying in Iowa, licensees must renew their certificates of licensure on or prior to the expiration date. A licensee who fails to renew prior to the date the certificate expires is not authorized to practice in Iowa unless the certificate is reinstated as provided in these rules. However, the board will accept an otherwise sufficient renewal application which is untimely if the board receives the application and late fee within 30 days of the date of expiration.

3.4(2) *Renewal notification.* The board typically mails a renewal notification to a licensee's last-known address at least one month prior to the license expiration date. Neither the board's failure to mail a renewal notification nor the licensee's failure to receive a renewal notification affects in any way the licensee's duty to timely renew if the licensee intends to continue practicing in Iowa. Licensees need to contact the board office if they do not receive a renewal notification prior to the expiration date.

3.4(3) *Renewal process.* Upon receipt of a timely and sufficient renewal application, with the proper fee, the board's executive secretary will issue a new license reflecting the next expiration date, unless grounds exist for denial of the application.

3.4(4) *Notification of expiration.* The board will notify licensees whose certificates of licensure have expired. The failure of the board to provide this courtesy notification, or the failure of the licensee to receive the courtesy notification, does not extend the date of expiration.

3.4(5) *Sanction for practicing after license expiration.* A licensee who continues to practice in Iowa after the license has expired is subject to disciplinary action. Such unauthorized activity may also provide grounds to deny a licensee's application to reinstate.

3.4(6) *Timely and sufficient renewal application.* Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a. Received by the board through the online renewal process;
- b. Fully completed; and
- c. Accompanied by the proper fee. The fee is deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is left off the application or is incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

3.4(7) *Responsibility for accuracy of renewal application.* The licensee is responsible for verifying the accuracy of the information submitted on the renewal application regardless of how the application is submitted or by whom it is submitted.

3.4(8) *Denial of renewal application.* If the board, upon receipt of a timely, complete and sufficient application to renew a certificate of licensure, accompanied by the proper fee, denies the application, the executive secretary will send written notice to the applicant by restricted, certified mail, return receipt requested, identifying the basis for denial. The applicant may contest the board's decision as provided in rule 193—7.40(546,272C).

3.4(9) *Continuing education.* A licensee who does not satisfy the continuing education requirements for licensure renewal will be denied renewal of licensure in accordance with subrule 3.4(8).

3.4(10) *Consent order option.* When a licensee appears to be in violation of mandatory continuing education under 193C—Chapter 7, the board may, in lieu of proceeding to a contested case hearing on the denial of renewal as provided in uniform division rule 193—7.40(546,272C), offer the licensee the opportunity to sign a consent order. While the terms of a consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation, and establish deadlines for compliance, and the consent order may impose additional educational requirements upon the licensee. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed certificate of licensure and, if the terms of the consent order are not complied with, will be subject to disciplinary action. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to uniform division rule 193—7.40(546,272C).

3.4(11) *Inactive status.* Licensees who are not engaged in engineering or land surveying practices that require licensure in Iowa may be granted inactive status. No inactive licensee may practice in Iowa unless otherwise exempted in Iowa Code chapter 542B.

193C—3.5(542B) Reinstatement of licensure.

3.5(1) To reinstate a license that has lapsed for one year or more, the applicant for reinstatement must pay the fee under rule 193C—2.1(542B) and satisfy one of the following:

- a. Provide documentation of 45 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 30 professional development hours for each profession); or
- b. Successfully complete the principles and practice examination within one year immediately prior to application for reinstatement; or
- c. For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's

mandatory continuing education during the period that the licensee's Iowa license was lapsed. An applicant for reinstatement whose resident state has no mandatory continuing education shall comply with the documented evidence as outlined in this subrule and at 193C—subrule 7.8(2).

3.5(2) To reinstate a license that has lapsed for less than one year, the applicant for reinstatement must pay the fee under 193C—2.1(542B) and satisfy one of the following:

a. Provide documentation of 30 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 20 professional development hours for each profession). Professional development hours used for reinstatement shall not be reused at the next renewal; or

b. Successfully complete the principles and practice examination within one year immediately prior to application for reinstatement; or

c. For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's mandatory continuing education requirement during the period that the licensee's Iowa license was lapsed. The statement shall bear the seal of the licensing board. An applicant for reinstatement whose resident state has no mandatory continuing education requirement shall comply with the documented evidence requirement as outlined in this subrule and at 193C—subrule 7.8(2).

3.5(3) A lapsed license may not be reinstated to inactive status.

3.5(4) To reinstate from inactive status to active status, the applicant for reinstatement must pay the fee under rule 193C—2.1(542B) and provide documentation of 45 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 30 professional development hours for each profession). Professional development hours used for a reinstatement shall not be reused at the next renewal.

These rules are intended to implement Iowa Code sections 272C.2, 272C.3, 542B.2, 542B.6, 542B.13, 542B.14, 542B.15, 542B.20 and 542B.30.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 4
“Engineering Licensure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: section 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The rules in proposed Chapter 4 provide information on compliance for becoming licensed as a professional engineer. Professional licensing ensures a baseline level of proven qualifications and expertise, which helps protect the public from unqualified practitioners.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Future licensees are impacted by this chapter because they incur the costs of a college education, plus the costs of exams. There is no anticipated cost to the public.

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

Future licensees will be the primary beneficiaries of the information in Chapter 4. The general public will also benefit from knowing the criteria to become a professional engineer. These rules ensure a standardized baseline education, offering protection to members of the public who utilize engineering services, since engineers deal with highly technical details requiring advanced education, experience and examination.

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

- Quantitative description of impact:

Individuals seeking a license are required to have a college degree. The average cost of a college education is \$36,500 per year. The cost of the exam, required of all professional engineers, is \$550 and is paid to a private entity. The cost of the license is \$100. Experience for the license is generally acquired in paid positions.

- Qualitative description of impact:

The primary impact of this rulemaking is to the Iowans who utilize engineering services and are protected by the rules related to becoming a professional engineer. There is an additional impact to potential licensees, who may take into account these rules when deciding a career path. The education and examination standards for a license as a professional engineer are standards consistent with most other jurisdictions nationwide.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to answer questions regarding the education, exam, and experience provisions for becoming a professional engineer. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs of the necessary education to comply with the rulemaking are paid to the schools. Costs of the exam are paid to the exam administrator. These rules have no anticipated impact on state revenue.

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

The Engineering and Land Surveying Examining Board believes elimination of the level of education and comprehensive nature of the exams would greatly reduce the level of knowledge and expertise of licensed engineers in Iowa. Maintaining these standards also serves to maintain the highest level of protection of Iowans. If the examination requirements were removed, there would be a loss of revenue to exam administrators that provide the exams outlined in the rules.

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

Less restrictive alternatives, including changing the education/examination requirements, would negatively impact Iowa licensees' eligibility to be licensed in other jurisdictions across the country where the provisions for licensure are essentially the same. It would also lessen the quality of Iowa engineers and negatively impact the health, safety and welfare of Iowans.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board regarding the agency's rules, but no alternatives were recommended because Iowa's criteria for licensure is in line with all jurisdictions across the country. The Board believes that a national standard is beneficial.

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

The Board believes that maintaining the nationally adopted standards for licensing engineers and land surveyors is critical to continuing to protect Iowans. It is also beneficial to licensees to practice in multiple states. Alternatives may result in an increase in the numbers of complaints and investigations. The current provisions for licensure are required by law.

Small Business Impact

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

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

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

Iowa does not license engineering firms, so the rulemaking will not directly or substantially impact small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4 ENGINEERING LICENSURE

193C—4.1(542B) Licensure by examination. The board will issue initial licensure only when an applicant satisfies the provisions of Iowa Code section 542B.14 as follows:

4.1(1) An applicant is eligible for the Engineer in Training certificate by meeting one of the following educational standards:

a. The applicant graduates from an engineering program of four years or more with an Accreditation Board of Engineering and Technology/Engineering Accreditation Commission (ABET/EAC)- or Canadian Engineering Accreditation Board (CEAB)-accredited curriculum. An engineering technology curriculum does not constitute an engineering program of four years or more.

b. After graduation from a nonaccredited engineering program of four years or more as described above, the applicant will complete one extra year of practical experience satisfactory to the board, verified by a professional engineer (PE) supervisory reference.

c. The applicant graduates with a master's degree in engineering from an institution in the United States of America that offers an accredited bachelor's degree in the same curriculum. The master's degree or a doctor of philosophy degree candidate must fulfill the requirements for the bachelor's degree in the same area of specialization.

d. An applicant with a master's degree or a doctor of philosophy degree in engineering from an institution in the United States of America that does not offer an accredited bachelor's degree in the same curriculum will be required to have an additional year of qualifying experience obtained after receipt of the qualifying degree. Applicants using a master's degree or a doctor of philosophy degree as the qualifying degree may not also use the master's degree or a doctor of philosophy degree for qualifying experience credit or as an exemption for the Fundamentals of Engineering examination (FE exam).

4.1(2) An applicant successfully completes the FE exam.

a. An applicant may take the FE exam any time after the educational requirements as specified above are completed, but the applicant must successfully complete the FE exam prior to taking the Principles and Practice of Engineering examination.

b. College seniors studying an ABET/EAC- or CEAB-accredited curriculum may take the FE exam during the final academic year. Applicants will be permitted to take the examination during the testing period which most closely precedes anticipated graduation.

c. An applicant who graduated from a satisfactory engineering program and has ten years or more of work experience satisfactory to the board is not required to take the FE exam. This experience is in addition to the four or five years of experience necessary for the PE license.

d. An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by the board, is not required to take the FE exam.

e. FE exam candidates will apply directly to the National Council of Examiners for Engineering and Surveying (NCEES) and will self-attest as to the candidate's eligibility to sit for the FE exam. The board will verify acceptable education and experience at the time an applicant applies for an Engineer in Training (EIT) number. The board shall apply the education and experience standards set forth in this rule but may allow reasonable flexibility in timing in the event an applicant sat for and passed the FE exam at a point earlier than provided in this rule. The board will not, however, issue an EIT number unless all experience required for candidates who hold engineering degrees from nonaccredited programs has been satisfied at the time of the EIT application.

4.1(3) An applicant successfully completes the Principles and Practice of Engineering examination (PE exam).

a. An applicant may take the PE exam any time after passing the FE exam.

b. PE exam candidates will apply directly to the NCEES. The applicant will document a qualifying education. The board will verify acceptable experience at the time the applicant applies for a professional engineer license.

4.1(4) An applicant obtains satisfactory practical experience in engineering work as follows:

a. Oversight. An applicant has direct supervision or professional tutelage (instruction, guidance, mentoring, review, and critique) from one or more licensed professional engineers. This experience will be verified by one or more licensed professional engineers who are familiar with the applicant's work and can attest that the experience was of the required quality and was accurately described. Verification of the qualifying experience is provided through the reference forms. It is the responsibility of the applicant to provide reference forms to the licensed professional engineers to complete and return directly to the board.

(1) To be readily acceptable, all of the practical experience is under the direct supervision and tutelage of one or more licensed professional engineers.

(2) To be considered, a portion of the qualifying experience is under the direct supervision or tutelage of one or more licensed professional engineers, and the rest of the practical experience is under the direct supervision or tutelage of an unlicensed graduate engineer.

b. Documentation of experience. An applicant submits references and a work project description. The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience acquired by the applicant.

(1) References. An applicant for the professional engineer license shall submit three references from professional engineers or a combination of professional engineers and graduate engineers on forms provided by the board.

1. The practical experience provided under the direct supervision or professional tutelage of the licensed professional engineers in the course of a mentoring relationship must include technical skills; professional development; the exercise of professional judgment, ethics, and standards in the application of engineering principles and in the review of such matters by others; and the professional obligations of assuming responsible charge of professional engineering works and services.

2. If the applicant has had more than one supervisor, at least two of the references shall be from a supervisor of the applicant. An applicant shall submit supervisor references to verify at least four years of qualifying experience.

3. If an applicant has had professional experience under more than one employer, the applicant shall provide references from individuals with knowledge of the work performed under a minimum of two employers.

4. The board reserves the right to contact references, supervisors, or employers for information about the applicant's professional experience and competence or to request additional references.

5. The board uses references partially as a means of verifying an applicant's record of experience. The applicant must distribute a reference form to individuals who are asked to submit references for the applicant. To each reference form, the applicant shall attach a narrative of the applicant's experience record that is being addressed by the referring individual.

6. The board may require the applicant to submit other evidence of suitable tutelage and supervision.

7. The board may conduct interviews with persons providing tutelage or supervision to the applicant.

(2) Work project description. An application for initial licensure includes a work project statement describing a significant project on which the applicant worked during the previous 12 months. The board will review all work project statements and will approve only those that include all of the following components:

1. Description of the applicant's degree of responsibility for the project.
2. The project's owner and location.
3. The name of the supervisor in charge of the project and, if the supervisor is a professional engineer, the license number of the supervisor.
4. The applicant's signature and date of signature.

(3) Criteria the board uses in evaluating the acceptability of the project as qualifying experience for the applicant includes, but is not limited to, the following:

1. The degree to which the project and the experience described have progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional;
2. The scope and quality of the professional tutelage experienced by the applicant;
3. The technical decisions required of the applicant in the project; and
4. The professional decisions required of the applicant.

c. Quality. An applicant has experience that demonstrates that the applicant has developed technical skill and initiative in the correct application of engineering principles. Such experience should demonstrate the applicant's capacity to review the application of these principles by others and to assume responsibility for engineering work of professional character.

d. Scope. The applicant has experience that includes sufficient breadth and scope to ensure that the applicant has attained reasonably well-rounded professional competence in a basic engineering field, rather than highly specialized skill in a narrow and limited field.

e. Progression. The record of experience indicates successive and continued progress from initial, subprofessional work of simpler character to recent, professional work of greater complexity and a higher degree of responsibility, as well as continued interest and effort on the part of the applicant toward further professional development and advancement. In evaluating this progression, the board will consider both subprofessional and professional activity as reported by the applicant. However, only work experience obtained after the applicant's receipt of the qualifying degree will be considered, except as described in paragraph 4.1(4) "f." Subprofessional work includes the time spent as an engineering technician, engineering assistant, inspector, or similar under the direct supervision of a licensed professional engineer. Professional work includes the time during which the applicant was occupied in engineering work of higher grade and responsibility than that defined above as subprofessional work. Time spent in teaching engineering subjects in a college or university at the level of assistant professor or higher may be listed as professional work.

f. Special work experience. Work experience prior to graduation from college may be accepted toward satisfaction of practical experience only as follows: Cooperative work programs and internships administered by engineering colleges and verified on the transcript, with a verifying reference from the internship supervisor, will be considered as half-time credit, with a maximum allowance of 6 months (12 months of cooperative work experience or internship) applicable toward the satisfaction of qualifying experience requirements. An applicant's advanced education, military experience, or both will be reviewed in order to determine if they are applicable toward the statutory requirements for experience.

g. Advanced education. An applicant who has earned a master of science degree that includes research experience, in addition to writing an associated thesis, from an institution in the United States of America with an accredited bachelor of science engineering degree program in the same discipline and who has fulfilled the requirements for a bachelor of science degree may be granted a maximum of one year's experience credit. An applicant who has earned a doctor of philosophy degree from an institution in the United States of America with an accredited bachelor of science engineering degree program in the same discipline may be granted a maximum of two years of experience credit in addition to the one-half year's credit for the master of science degree. An applicant using an advanced degree as experience credit may not also use the advanced degree as the qualifying degree to become licensed.

h. Teaching experience. Teaching of engineering subjects at the level of assistant professor or higher in an accredited engineering program may be considered as experience, provided the applicant's immediate supervisor is a licensed professional engineer in the jurisdiction in which the college or university is located. If the applicant's immediate supervisor is not a licensed professional engineer, a program of mentoring or peer review by a licensed professional engineer acceptable to the board must be demonstrated. Applicants using teaching or research as experience must have a minimum of four years of acceptable experience in research, industry, or consulting. The board will consider the complexity of the project(s) presented, the degree of responsibility of the applicant within the project, and other factors the board deems relevant. Academic experience must demonstrate increasing levels of responsibility for the conduct and management of projects involving engineering research, development, or application. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

i. Joint applications. Applicants requesting licensure both as a professional engineer and a land surveyor must submit a history of professional experience in both fields. Such histories will be considered separately on a case-by-case basis. The board does not grant full credit for concurrent experience in both professions.

j. Corporate exemption. The purpose of the provisions on qualifying experience which authorize the board to consider some experience that was not acquired under the direct supervision and tutelage of a licensed professional engineer is to provide a path toward licensure for those applicants who gain experience in settings where licensure is not required under the corporate exemption set forth in Iowa Code section 542B.26 or under similar statutory provisions in other jurisdictions. Such applicants may lawfully gain professional engineering experience under the supervision or tutelage of graduate engineers who are not licensed. To aid such applicants, the following guidelines are provided:

(1) The board will not consider any of the following experience:

1. Experience gained under circumstances where the applicant could not lawfully have practiced professional engineering.

2. Experience attained in compliance with the law but that was not under the supervision or tutelage of a graduate engineer. The fundamental purpose of qualifying experience is professionally guided training to expand and complement engineering education. Self-guided experience does not qualify.

(2) Unlicensed graduate engineers are not authorized to offer professional engineering services to the public or to be in responsible charge of such services; nor are they subject to the examinations required for licensure, the professional and ethical standards applicable to licensees, or the regulatory oversight of a licensing authority. Qualifying experience is intended to address both technical competence and the obligations to the public of a licensed professional engineer.

(3) Because the circumstances of individual applicants in corporate exemption settings are diverse, it is not possible to identify the minimum period of time during which the applicant must receive supervision or tutelage from one or more licensed professional engineers to be eligible for licensure. The board will evaluate both the quantity and quality of such experience. In general, an applicant's exposure to supervision or tutelage by one or more licensed professional engineers should reflect a sustained period of in-depth interaction from which the licensed engineers are in a position to form credible opinions on the applicant's qualifications to be in responsible charge of engineering services offered to the public as a licensed professional engineer.

(4) The burden is on the applicant to demonstrate to the board's satisfaction that the combination of unlicensed and licensed supervision and tutelage satisfies the requirements of qualifying experience described in this rule.

k. Practical experience. An applicant for a professional engineer license shall have a minimum of one year of practical experience in the United States of America or a territory under its jurisdiction.

4.1(5) Education and experience requirements. The board will require the minimum number of years set forth on the following chart before an applicant will be eligible for licensure.

| Experience Requirements | |
|---|------------------------------|
| If the education is: | Required years of experience |
| A 4-year bachelor's degree in a nonaccredited engineering program | 5 |
| A 4-year bachelor's degree in an accredited engineering program OR a qualifying master's degree pursuant to paragraph 4.1(1) "c" OR a qualifying PhD pursuant to paragraph 4.1(1) "d" | 4 |
| A 4-year bachelor's degree in an accredited engineering program plus a qualifying master's degree pursuant to paragraph 4.1(4) "g" | 3 |
| A 4-year bachelor's degree in an accredited engineering program plus a qualifying PhD pursuant to paragraph 4.1(4) "g" | 2 |
| A 4-year bachelor's degree in an accredited engineering program AND a qualifying master's degree AND a qualifying PhD pursuant to paragraph 4.1(4) "g" | 1 |

4.1(6) Required examinations. All examinations are uniform examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES). The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants shall pay examination fees directly to the service.

a. Fundamentals of Engineering examination. The Fundamentals of Engineering examination is a computer-based examination covering general engineering principles and other subjects commonly taught in accredited engineering programs.

b. Principles and Practice of Engineering examination. A separate examination is required for each branch in which licensure is granted. An applicant may obtain a Structural branch license by passing either the Principles and Practice of Engineering Civil (Structural) examination or the Principles and Practice of Engineering Structural examinations.

c. Conduct during the exam. Examinees will comply with the testing rules and regulations of the exam administrator.

193C—4.2(542B) Requirements for licensure by comity. A person holding a certificate of licensure to engage in the practice of engineering issued by a proper authority of a jurisdiction or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of Iowa Code section 542B.14 and who has met standards determined by the board to be substantially equivalent to those required of applicants for initial licensure in this state may, upon application, be licensed without further examination. Comity applicants are governed by the same standards as are required of applicants for initial licensure in Iowa.

4.2(1) References. An applicant for licensure by comity shall submit references on forms provided by the board to verify satisfactory engineering experience, as provided in paragraph 4.1(4) “a.”

4.2(2) Basis for evaluation of applications. Applications for licensure by comity will be evaluated on the following basis:

a. The applicant’s record of education, references, practical experience, and successful completion of approved examinations will be reviewed to determine if it currently satisfies the substantive requirements of Iowa Code section 542B.14. In reviewing the education, references, and practical experience of comity applicants, the board will use the same criteria used by the board to determine the eligibility of a candidate for the Principles and Practice of Engineering examination; or

b. The applicant’s licensure in a jurisdiction other than Iowa will be reviewed to determine if it was granted only after satisfaction of requirements substantially equivalent to those that are required of applicants for initial licensure in Iowa by Iowa Code section 542B.14. When determining whether the licensing standards satisfied by a comity applicant are substantially equivalent to those required in Iowa, the board considers each of the four licensing prerequisites in Iowa Code section 542B.14(1) individually. The licensing standards are satisfied by the comity applicant if the standards are equal or superior to those required in Iowa for education, fundamentals examination, experience, and professional examination. Unless expressly stated in this chapter, the board will not consider an applicant’s superior satisfaction of one licensing prerequisite, such as a higher level of education than is required in Iowa, as resolving an applicant’s lack of compliance with another prerequisite, such as professional examination.

4.2(3) Comity application process.

a. An applicant for licensure by comity from a jurisdiction other than Iowa meets or exceeds the education requirements set forth in Iowa Code section 542B.14 and subrule 4.1(1).

b. An applicant successfully completes the Fundamentals of Engineering examination. An applicant who graduated from a satisfactory engineering program and who has ten years or more of work experience satisfactory to the board is not required to take the Fundamentals of Engineering examination.

c. The applicant successfully completes the Principles and Practice of Engineering examination.

d. The applicant has satisfactory practical experience under paragraph 4.1(3) “a.”

e. While the board will consider evidence presented by a comity applicant on non-NCEES examinations successfully completed in a foreign country, the non-NCEES examination will be compared with the appropriate NCEES examination. A non-NCEES professional examination, for instance, must be designed to determine whether a candidate is minimally competent to practice professional engineering in a specific branch of engineering, such as civil, structural, electrical, or mechanical engineering. The examination must be written, objectively graded, verifiable, and developed and validated in accordance with the testing standards of the American Psychological Association or equivalent testing standards. Free-form essays and oral interviews are not equal or superior to NCEES examinations.

4.2(4) Education and experience requirements.

a. For applicants who were originally licensed in a jurisdiction other than Iowa prior to July 1, 1988, the board will employ the following chart to determine if the applicant’s licensure was granted after satisfaction of requirements substantially equivalent to those which were required by Iowa Code section 542B.14 at the time of the applicant’s original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that

were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

| EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988 | | |
|--|---|--|
| If the applicant's educational level was: | The applicant has had the following additional years of experience prior to taking the Fundamentals of Engineering examination: | The applicant has had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination: |
| No post-high school education | 8 | 4 |
| Postsecondary study in mathematics or physical sciences | | |
| One year | 7 | 4 |
| Two years | 6 | 4 |
| Three years | 5 | 4 |
| Four years | 3 | 4 |
| Four-year BS degree in mathematics or physical sciences plus master's degree in engineering | 0 | 4 |
| Postsecondary study in engineering technology programs and architecture | | |
| One year | 7 | 4 |
| Two years | 5.5 | 4 |
| Three years | 4 | 4 |
| Four-year degree in a nonaccredited engineering technology program or BA in architecture | 2.5 | 4 |
| Four-year degree in an accredited engineering technology program | 2 | 4 |
| Bachelor of architecture, four years or more | 2 | 4 |
| Four-year degree in engineering technology or architecture plus master's degree in engineering | 0 | 4 |
| Postsecondary study in a nonaccredited engineering program | | |
| One year | 7 | 4 |
| Two years | 5 | 4 |
| Three years | 3 | 4 |
| Four-year BS degree | 1 | 4 |
| Four-year degree in a nonaccredited engineering program plus master's degree in engineering | 0 | 4 |
| Postsecondary study in an accredited engineering program | | |
| Two years | 6 | 4 |
| Three years | 3 | 4 |
| Four-year degree in an accredited engineering program | 0 | 4 |

b. For applicants who were originally licensed in another jurisdiction and who meet the requirements of Iowa Code section 542B.14(1)“a”(1)(c), the board will employ the following chart to determine if the applicant's licensure was granted after satisfaction of requirements substantially equivalent to those which were required by Iowa Code section 542B.14 at the time of the applicant's original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

| EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who meet the requirements of Iowa Code section 542B.14(1)“a”(1)(c) | | |
|---|---|--|
| If the applicant’s educational level was: | The applicant has had the following additional years of experience prior to taking the Fundamentals of Engineering examination: | The applicant has had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination: |
| College or junior college (mathematics or physical sciences) | | |
| Two years | 6 | 4 |
| Three years | 5 | 4 |
| Four-year BS degree | 3 | 4 |
| Four-year BS degree plus master's degree in engineering | 0 | 4 |
| All engineering technology programs and architecture | | |
| Two years | 6 | 4 |
| Three years | 5 | 4 |
| Four-year degree, nonaccredited technology or BA in architecture | 3 | 4 |
| Four-year degree, accredited technology | 2 | 4 |
| Four-year degree or more, bachelor of architecture | 2 | 4 |
| Four-year BS degree, technology or architecture plus master’s degree in engineering | 0 | 4 |
| Engineering program, nonaccredited | | |
| Two years | 6 | 4 |
| Three years | 3 | 4 |
| Four-year BS degree | 1 | 4 |
| Four-year BS degree plus master's degree in engineering | 0 | 4 |
| Engineering program, accredited | | |
| Two years | 6 | 4 |
| Three years | 3 | 4 |
| Four-year BS degree | 0 | 4 |

c. For all other applicants who were originally licensed in a jurisdiction other than Iowa on or after July 1, 1988, the board will employ the chart found at subrule 4.1(5) to determine if the applicant’s licensure was granted after satisfaction of requirements substantially equivalent to those which are required by Iowa Code section 542B.14.

d. For purposes of this subrule, an applicant’s master’s degree in engineering is to be from an institution in the United States of America with an accredited bachelor’s degree in the same curriculum, and the master’s degree candidate is required to fulfill the requirements for the bachelor’s degree in the same area of specialization.

193C—4.3(542B) Requirements for a licensee requesting additional examination. A person holding an active certificate of licensure to engage in the practice of engineering issued by the state of Iowa may, upon written request and payment of the application and examination fees, take additional examinations in other branches of engineering without submitting a formal application to the board as described for initial or comity licensure.

These rules are intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, 542B.17 and 542B.20.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 5
“Land Surveying Licensure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The rules of proposed Chapter 5 provide information on compliance for becoming licensed as a professional land surveyor. Professional licensing ensures a baseline level of proven qualifications and expertise, which helps protect the public from unqualified practitioners.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Future licensees are impacted by this chapter because they incur the costs of a college education, plus the costs of exams. There is no anticipated cost to the public.

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

Future licensees will be the primary beneficiaries from the information in Chapter 5. The general public will also benefit from knowing the criteria to become a professional land surveyor. These rules ensure a baseline education, offering protection to the public who utilizes land surveying services, since land surveyors deal with highly technical details requiring specific education, experience and examination.

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

- Quantitative description of impact:

Individuals seeking a license are required to have a two- or four-year college degree. The average cost of a college education is \$36,500 per year. The cost of the national portion of the exam, required of all professional engineers, is \$475 and is paid to a private entity. The cost of the state-specific portion of the exam is \$30 and is paid to the Department. The cost of the license is \$100. Experience for the license is generally acquired in paid positions.

- Qualitative description of impact:

The primary impact of this rulemaking is to the Iowans who utilize land surveying services and are protected by the rules related to becoming a professional land surveyor. There is an additional impact to potential licensees, who may take into account these rules when deciding a career path.

3. Costs to the State:

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

The costs to the agency are for regular staff time needed to review applications to ensure compliance with the rules of Chapter 5 and manage Engineering and Land Surveying Examining Board activities. The time needed to manage this provision is generally in the form of responding to questions related to licensing requirements. An executive officer supports the full scope of work of this Board at approximately 0.31 full-time equivalent (FTE) position, which includes answering questions from the public and licensees relating to practice standards, continuing education, Board meeting administration, and more. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs of the necessary education to comply with the rulemaking are paid to the schools. Costs of the national exam are paid to the exam administrator. There is a \$30 fee for the Iowa State Specific Land Surveying Exam that is paid to the Department. These rules have a minimal impact on state revenue.

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

The Board believes elimination of the level of education and comprehensive nature of the exams would greatly reduce the level of knowledge and expertise of licensed land surveyors in Iowa. Maintaining these standards also serves to maintain the highest level of protection of Iowans. If the examination requirements were removed, there would be a loss of revenue to exam administrators who provide the exams outlined in rule.

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

Less restrictive alternatives regarding education and experience have been implemented by these rules, reflecting a recent law change to Iowa Code chapter 542B. These changes positively impact Iowa licensees' eligibility to be licensed in Iowa.

6. Alternative methods considered by the agency:

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

Alternative methods are being proposed due to a recent law change to Iowa Code chapter 542B. The Board is altering education and experience requirements to make the professional land surveyor's license accessible to a larger pool of interested parties.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking: Alternatives are being proposed.

Small Business Impact

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

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

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

Iowa does not license engineering firms, so the rulemaking will not directly or substantially impact small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5 LAND SURVEYING LICENSURE

193C—5.1(542B) Requirements for licensure by examination. The specific requirements for initial licensing in Iowa are established in Iowa Code section 542B.14, and it is the board's intention to issue initial licensure only when those requirements are satisfied chronologically as set forth in the statute.

5.1(1) The applicant for initial licensure in Iowa must satisfy the education plus experience requirements stated in Iowa Code section 542B.14 "b"(1). Refer to the chart in subrule 5.1(8) for education-based experience requirements. If the applicant's degree is not in surveying, surveying technology, engineering, or engineering technology, the applicant must have taken a minimum of 9 credit hours in mathematics, of which at least one course must include trigonometry in its coursework, and may include college algebra, trigonometry, analytic geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistics, and advanced calculus; and a minimum of 9 credit hours in basic sciences, which must cover one or more of the following topics: general chemistry, advanced chemistry, biology, geology, ecology, meteorology, astronomy, forestry, general physics, advanced physics, or land surveying, for the applicant's degree to be a qualifying degree.

a. Internet or online degrees will only be considered as qualifying degrees if the institution issuing the degree is accredited by a recognized accreditation board or the degree is evaluated as substantially equivalent to that of an accredited program by the National Council of Examiners for Engineering and Surveying (NCEES). The board may accept evaluations from other recognized foreign credential evaluators satisfactory to the board. Initiating the evaluation and the expense of the evaluation are the responsibilities of the applicant. Each evaluation shall be sent directly to the board from the evaluation

service and shall include a copy of the transcript in the form sent to the evaluation service directly from the educational institution.

b. Internet or online degrees will only be considered as qualifying degrees if the institution issuing the degree is accredited by a recognized accreditation board.

5.1(2) The applicant must successfully complete the Fundamentals of Land Surveying examination. The applicant may take the Fundamentals of Land Surveying examination any time after the education and experience requirements described above are completed.

5.1(3) The applicant must successfully complete the Principles and Practice of Land Surveying examination. An applicant may take the Principles and Practice of Land Surveying exam after passing the Fundamentals of Land Surveying exam.

5.1(4) The applicant satisfies the qualifying experience requirements set forth in this chapter.

5.1(5) The applicant must successfully complete the Iowa specific land surveying examination administered by the board.

5.1(6) Work project description. A complete application includes a statement of approximately 200 words describing a significant project on which the applicant worked closely during the last 12 months. The statement describes the applicant's degree of responsibility for the project and identifies the project's owner and its location. The statement is signed and dated. The criteria the board uses in evaluating the acceptability of the project as qualifying experience for the applicant includes, but is not limited to, the following:

- a.* The degree to which the project and the experience described has progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional;
- b.* The scope and quality of the professional tutelage experienced by the applicant;
- c.* The technical decisions required of the applicant in the project; and
- d.* The professional decisions required of the applicant.

The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience presented to the applicant.

5.1(7) *References.*

a. An applicant for the Principles and Practice of Land Surveying examination will submit a minimum of three references, on forms provided by the board, in accordance with the following:

- (1) The references will be from licensed professional land surveyors.
- (2) If the applicant has had more than one supervisor, at least two of the references are from a supervisor of the applicant.
- (3) If an applicant has had professional experience under more than one employer, the applicant provides references from individuals with knowledge of the work performed under a minimum of two employers.
- (4) The board reserves the right to contact employers for information about the applicant's professional experience and competence or to request additional references.

b. An applicant for the Fundamentals of Land Surveying examination will provide three references on forms provided by the board.

5.1(8) Education and experience requirements. The board requires the minimum number of years set forth on the following chart before an applicant may take either the Fundamentals of Land Surveying or the Principles and Practice of Land Surveying examination. To determine the total years to become licensed as a land surveyor in Iowa, column 2 is added to column 1.

| EXPERIENCE REQUIREMENTS | | |
|---|---|--|
| If the applicant's educational level was: | The applicant must have the following years of experience prior to taking the Fundamentals of Land Surveying examination and the Principles & Practice examination: | The applicant must have the following additional years of experience before the board will issue a license in land surveying:* |
| A college program with fewer than 9 credit hours of surveying [Reference Sec. 5.1(1) above] | | |
| Two-year degree | 4 | 4 |
| Four-year degree | 2 | 4 |
| Graduate degree | 1 | 4 |
| A college program with 9 or more credit hours of surveying | | |
| Two-year degree | 0 | 4 |
| Four-year degree | 0 | 4 |
| Graduate degree | 0 | 4 |

*This allows applicants to take the Principles and Practice of Land Surveying exams and Iowa state specific exam during this time period.

5.1(9) Practical experience requirements. Practical land surveying experience, of which a minimum of one-half shall be field experience, is required prior to licensing. All practical experience must occur after high school graduation and be under the tutelage of a professional land surveyor.

a. Quality. Experience will demonstrate that the applicant has developed technical skill and initiative in the correct application of surveying principles. For the purposes of this chapter, one year of experience shall consist of 1,872 hours of full- or part-time employment, as attested to by the applicant's references. An applicant may use a maximum of 1,872 hours in any one 12-month period to satisfy the experience requirements. Full-time students, as defined by the student's school, may not, simultaneously, be considered full-time employees for the purposes of this chapter.

b. Scope. Experience will be of sufficient breadth and scope to ensure that the applicant has attained reasonably well-rounded professional competence in land surveying. For purposes of this section, field experience is considered of sufficient breadth and scope if the applicant conducts research for boundary surveys, conducts boundary monument recovery field work, gathers field information necessary for boundary line recovery, analyzes all collected boundary recovery field data, establishes land surveying monuments in the field, prepares land surveying documents, as defined in this chapter, and writes property descriptions.

c. Progression. The record of experience will indicate successive and continued progress from initial work of simpler character to recent work of greater complexity and higher degree of responsibility.

d. Advanced education and military experience. An applicant's advanced education, military experience, or both will be reviewed to determine if they are applicable toward the statutory requirements for experience.

e. Joint applications. Applicants requesting licensure both as professional engineers and professional land surveyors must submit a history of professional experience in both fields. Such histories will be considered separately on a case-by-case basis. The board does not grant full credit for concurrent experience in both professions.

5.1(10) Examinations. The board prepares and grades the Iowa State Specific Land Surveying examination administered to professional land surveyor candidates. All other examinations are uniform examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES). The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants pay examination fees directly to the service.

An applicant who has failed two consecutive examinations of the state-specific portion of the professional land surveying examination is not allowed to retake the state-specific portion for one year.

a. Materials permitted in examination room. For security reasons, applicants shall comply with requirements regarding materials permitted in the examination room as issued by the National Council of Examiners for Engineering and Surveying and provided to candidates prior to the examination.

b. Release of examination results. Results of any examination are only reported as pass or fail except that the candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

193C—5.2(542B) Requirements for licensure by comity. A person holding a certificate of licensure to engage in the practice of land surveying issued by a proper authority of a jurisdiction or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of Iowa Code section 542B.14 and of a standard not lower than that specified in the applicable licensure Act may, upon application and successful completion of the Iowa State Specific Land Surveying examination, be licensed without further examination. Comity applicants are governed by the same standards as are required of Iowa applicants.

5.2(1) References. An applicant for licensure by comity shall submit one or more professional land surveyor references on forms provided by the board to verify the number of years of satisfactory experience required with the applicant's level of education. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

5.2(2) Comity application process.

a. The applicant will provide proof of active land surveying licensure in another jurisdiction and be in good standing with that jurisdiction's licensing authority.

b. The applicant for licensure by comity from a jurisdiction other than Iowa will satisfy the education and experience requirements as set forth in Iowa Code section 542B.14 and rule 193C—5.1(542B) for licensure by examination.

c. The applicant needs to successfully complete the Fundamentals of Land Surveying examination.

d. The applicant needs to successfully complete the Principles and Practice of Land Surveying examination.

While the board will consider evidence presented by a comity applicant on non-NCEES examinations successfully completed in a foreign country, the non-NCEES examination will be compared with the appropriate NCEES examination. A non-NCEES professional examination, for instance, must be designed to determine whether a candidate is minimally competent to practice professional land surveying. The examination must be written, objectively graded, verifiable, and developed and validated in accordance with the testing standards of the American Psychological Association or equivalent testing standards. Free-form essays and oral interviews are not equal or superior to NCEES examinations for reasons including the subjective nature of such procedures, lack of verifiable grading standards, and heightened risk of inconsistent treatment.

e. The applicant must successfully complete an Iowa specific land surveying examination administered by the Board.

5.2(3) Substantial equivalency. Pursuant to Iowa Code section 546.10(8), the board may grant a comity application for licensure as a professional land surveyor if the board concludes that the applicant has met or exceeded all requirements for licensure applicable to initial applicants in Iowa, other than the sequence in which experience must be attained.

193C—5.3(542B,272C) Licensure by verification. In addition to the requirements of rule 193—14.4(272C), professional land surveying candidates applying for an Iowa license by verification must pass the Iowa State Specific Land Surveying examination prior to being issued a license. The board will issue a temporary license that is valid for a period of three months to professional land surveying candidates who have not yet passed the Iowa State Specific Land Surveying examination

prior to their application. The professional land surveying candidate may request one renewal of the temporary license for an additional period of three months.

This rule is intended to implement Iowa Code section 272C.12.

These rules are intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15 and 542B.20.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 6
“Seal and Certificate of Responsibility”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The rules in proposed Chapter 6 provide information on compliance for the professional seal and signature.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost of the seal is levied upon the licensees.
 - Classes of persons that will benefit from the proposed rulemaking:

Licenses and the general public will benefit from having established provisions for a record of licensed professionals in charge of engineering and land surveying projects in Iowa.

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

- Quantitative description of impact:

The cost of the seal is approximately \$40 and is incurred by the licensees. There is no direct cost to the general public.

- Qualitative description of impact:

The provisions for an engineer's or land surveyor's seal allow interested parties and the public to access specific information regarding the identity of the person in charge of engineering and land surveying projects in Iowa.

3. Costs to the State:

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

No fees are paid to the State. The minor costs to the agency are for regular staff time needed to address questions regarding the rules. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, House File 557.

- Anticipated effect on state revenues:

The fee for an engineer's or land surveyor's seal is paid to the vendor who generates the physical seal. There is no effect on state revenues.

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

Eliminating the record of the person in charge would put the public at great risk. The provisions for Chapter 6 create a vital record when the need arises to research a completed project.

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

Since no fees are included in Chapter 6, there are little or no cost implications. Intrusion is necessary in order to protect Iowans doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Engineering and Land Surveying Examining Board on all chapters of the Board's rules. No alternatives were seriously considered.

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

The professional seal protects Iowans and is consistent with the rules in jurisdictions nationwide.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

Iowa does not license engineering or land surveying firms, so the rulemaking will not directly or substantially impact small businesses.

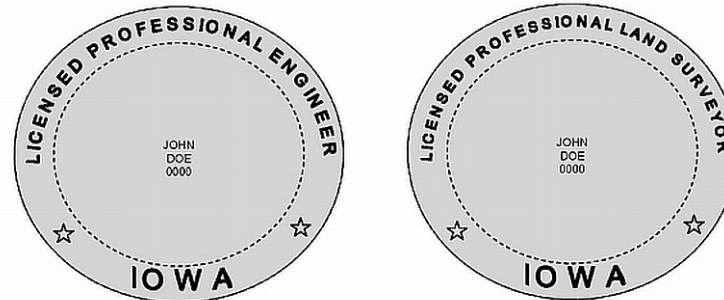
Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
SEAL AND CERTIFICATE OF RESPONSIBILITY

193C—6.1(542B) Seal and certificate of responsibility.

6.1(1) The seal, under Iowa Code section 542B.16, should substantially conform to the samples shown below:



6.1(2) The word “licensed” may be added but is not required on the seal. Neither the word “registrant” nor “registered” may be used on the seal.

6.1(3) The certification block, under Iowa Code section 542B.16(2), on engineering or land surveying documents submitted to a client or any public agency, hereinafter referred to as the official copy (or official copies), appears on the first page or attached cover sheet. A certification block should be provided for the licensee in responsible charge and for each professional consultant contributing to the submission. In lieu of each contributing professional consultant providing a certification block on the front page or attached cover sheet for application of a seal, a table shall be provided that identifies the contributing professionals and where their respective certification blocks can be found within the document. The seal and original signature only need to be applied to a final submission. Each official copy (or official copies) of a submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the submission. Each certification block shall display the seal of the licensee and designate the portion of the submission for which that licensee is responsible, so that responsibility for the entire submission is clearly established by the combination of the stated seal responsibilities. Any nonfinal submission of an engineering or land surveying document to a client or public agency shall be clearly labeled “preliminary” or “draft.”

The engineering certification block shall conform to the wording in the sample shown below:

| | |
|------|---|
| SEAL | I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa. |
| | _____ (signature) (date) |
| | Printed or typed name |
| | License number _____ |
| | My license renewal date is December 31, _____. |
| | Pages or sheets covered by this seal: _____ _____ _____ |

The land surveying certification block shall conform to the wording in the sample shown below. For maps or acquisition plats prepared from public records or previous measurements by others, the following land surveying certification block may be modified by removing the phrase “and the related survey work was performed.”

| | |
|------|---|
| SEAL | I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Professional Land Surveyor under the laws of the State of Iowa. |
| | _____ (signature) (date) |
| | Printed or typed name |
| | License number _____ |
| | My license renewal date is December 31, _____. |
| | Pages or sheets covered by this seal: _____ _____ _____ |

6.1(4) Except for the original signature and handwritten date in contrasting ink color, the information requested in each certification block must be typed or legibly printed in permanent ink on each official copy. The seal implies responsibility for the entire submission unless the area of responsibility is clearly identified in the information accompanying the seal.

6.1(5) It is the responsibility of the licensee to forward copies of all revisions to the submission, which then become a part of the official copy of the submission. Such revisions shall be identified as applicable on a certification block or blocks with professional seals applied so as to clearly establish professional responsibility for the revisions.

6.1(6) The licensee is responsible for the custody and proper use of the seal. Improper use of the seal is grounds for disciplinary action.

6.1(7) Computer-generated seals may be used on final original documents.

6.1(8) Secure electronic signature. An electronic signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule if it is protected by a security procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the licensee's responsibility to ensure, prior to affixing an electronic signature to an engineering or land surveying document, that security procedures are adequate to (1) verify the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed.

This rule is intended to implement Iowa Code sections 542B.13, 542B.15, 542B.20 and 542B.30.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 7
“Professional Development”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

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Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The proposed rules in Chapter 7 provide information on compliance for professional development.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Chapter 7 sets forth continuing education requirements for engineers and land surveyors. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing

education is to ensure that engineers and land surveyors maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

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

Licensees will benefit by maintaining current knowledge of advances in the profession. The public will benefit from having an educated pool of professionals offering services.

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

- Quantitative description of impact:

Private industry, professional associations, and employers offer continuing education, so the Engineering and Land Surveying Examining Board does not have information on exact costs. Licensees are required to attest to at least 30 hours acquired in a two-year period. The cost to the licensee is estimated to be between \$0 and \$1,000 every two years.

- Qualitative description of impact:

Continuing education has a public safety benefit because it ensures licensed professionals are receiving a current education on standards for services offered. Continuing education is required by other jurisdictions nationwide.

3. Costs to the State:

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

The cost to the agency is staff time needed to review continuing education compliance through random audits. An executive officer supports the full scope of work of this Board at approximately 0.30 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. This rulemaking has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

Eliminating continuing education requirements would have no cost impact to the State, but it could impact the quality of the licensed professionals offering services to the public.

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

The cost of continuing education is not controlled by the agency. Intrusion is necessary in order to protect Iowans and visitors doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered. Iowa's continuing education is consistent with neighboring jurisdictions.

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

Continuing education is a nationwide standard.

Small Business Impact

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

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

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

Iowa does not license engineering or land surveying firms. There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 7 and adopt the following new chapter in lieu thereof:

CHAPTER 7
PROFESSIONAL DEVELOPMENT

193C—7.1(542B,272C) General statement. Completion of continuing education for professional development is a condition of licensure renewal for each licensee.

193C—7.2(542B,272C) Definitions. As used in these rules, the following definitions apply:

“*College or unit semester or quarter hour*” means the unit of credit given for advanced technical and graduate courses from universities with programs accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc. or other related college course qualified in accordance with this chapter.

“*Continuing education*” means education obtained by a licensee in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

“*Continuing education unit (CEU)*” means the unit of credit customarily granted for continuing education courses. One continuing education unit is given for ten hours of class in an approved continuing education course.

“*Course or activity*” means any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

“*Independent study*” means any course or activity in which there is no real-time interaction between the training provider and the licensee, such as courses offered on the Internet.

“*Professional development hour (PDH)*” means a contact hour of instruction or presentation and is the common denominator for other units of credit.

193C—7.3(542B,272C) Professional development hours.

7.3(1) Allowable activities. Licensees may earn professional development hours by participating in a variety of activities. The following is a list of allowable activities and is not all-inclusive:

- a. Successful completion of college courses;
- b. Successful completion of continuing education courses;

- c. Successful completion of correspondence, televised, videotaped, and other short courses or tutorials;
- d. Successful completion of courses on-line via the Internet;
- e. Active participation in seminars, in-house courses, workshops, technical committees of professional engineering organizations, and professional conventions;
- f. Teaching or instructing in the activities set forth above if such teaching or instruction is outside of the licensee's regular employment duties and if the licensee can document such teaching activity or instruction was newly developed and presented for the first time;
- g. Authoring published papers, articles or books;
- h. Obtaining patents;
- i. Attendance at online video courses;
- j. Participation on an NCEES examination development committee;
- k. Attendance at engineering college graduate research seminars.

All of the allowable activities listed above must adhere to this chapter to be accepted by the board.

7.3(2) PDH conversion. The following chart illustrates the conversion from other units to PDH:

| ACTIVITY | PDH |
|---|--|
| 1 College or unit semester hour Credit for qualifying college or community college courses will be based upon course credit established by the college. | 45 PDH per semester hour |
| 1 College or unit quarter hour Credit for qualifying college or community college courses will be based upon course credit established by the college. | 30 PDH per quarter hour |
| 1 Continuing Education Unit as defined in 193C—7.2(542B,272C) | 10 PDH |
| 1 Contact hour attendance in a class, course, seminar, or professional or technical presentation made at a meeting, in-house training session, convention or conference. Credit for qualifying seminars and workshops will be based on 1 PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional or technical society meetings will earn PDH units for the actual time of each program, excluding time for breaks and meals. | 1 PDH per hour |
| 1 Contact hour teaching a class, course, seminar, or a professional or technical presentation a. Teaching credit is valid for teaching a course or seminar for the first time only. b. Teaching credit does not apply to full-time faculty. c. Teaching credit is limited to 10 PDH per biennial renewal period. | 2 PDH per hour |
| Each published paper, article, or book Credit for published material is earned in the biennium of publication. | 10 PDH per publication |
| Active participation in a professional or technical society. Credit for active participation in professional and technical societies is limited to 2 PDH per renewal period per organization and requires that a licensee serve as an officer or actively participate in a committee of the organization. PDH credits are earned for a minimum of one year's service. | 2 PDH per organization per renewal period |
| Each patent Credit for patents is earned in the biennium the patent is issued. | 10 PDH per patent |
| Participation on an NCEES examination development committee or Iowa state specific land surveying examination development committee, including the writing and grading of examination questions, writing reference materials for examinations, and evaluating past examination question performance. Licensees may claim a maximum of 30 PDH per biennial renewal period for participation in this activity. | 2 PDH per hour of committee participation |

7.3(3) Determination of credit. The board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit. No preapproval of offerings will be issued. The board may deny any renewal or reinstatement upon a determination of insufficient or unsatisfactory continuing education.

193C—7.4(542B,272C) Professional development guidelines. Continuing education activities that satisfy the professional development criteria are those that relate to engineering or land surveying practice or management. It is recognized that an engineer's specialized skills must have as their

foundation a fundamental knowledge of chemistry, physics, mathematics, graphics, computations, communication, and humanities and social sciences. However, continuing education in the fundamentals alone will not be sufficient to maintain, improve, or expand engineering skills and knowledge. For that reason, licensees will be limited in their use of fundamental courses in proportion to ABET criteria for accreditation of engineering curricula. Continuing education activities are classified as:

7.4(1) Group 1 activities. Group 1 activities are intended to maintain, improve, or expand skills and knowledge obtained prior to initial licensure. The following chart illustrates the maximum PDH allowable per renewal period for Group 1 activities:

| Type of course/activity | Number of PDH allowed per renewal period |
|--|--|
| Mathematics and basic sciences Math beyond Trigonometry Basic sciences: Chemistry, Physics, Life sciences, Earth sciences | 10 PDH |
| Engineering sciences Mechanics, Thermodynamics, Electrical and electrical circuits, Materials science, *Computer science *Courses in computer science will generally be considered a part of the Engineering Sciences category in the ABET criterion and, therefore, limited to a maximum of 10 PDH per renewal period. | 10 PDH |
| Humanities and social sciences Philosophy, Religion, History, Literature, Fine arts, Sociology, Psychology, Political science, Anthropology, Economics, Foreign languages, Professional ethics, Social responsibility | 5 PDH |
| Engineering-related courses Accounting, Industrial management, Finance, Personnel administration, Engineering economy, English, Speech, *Computer applications *The computer is considered a tool available to engineers and land surveyors. Courses related to computer drafting and general computer applications are generally not applicable to either Group 1 or Group 2 activities. Computer courses that relate to engineering or land surveying design applications, such as structural design/analysis software, are considered acceptable. | 10 PDH |

7.4(2) Group 2 activities. Group 2 activities are intended to develop new and relevant skills and knowledge. Credit for participation in activities in the group is unlimited, subject to maximum carryover. Typical areas include postgraduate level engineering science or design, new technology, environmental regulation and courses in management of engineering or land surveying activity (regular work duties do not qualify).

7.4(3) Independent study. To be readily acceptable by the board, independent study as defined in rule 193C—7.2(542B,272C) meets all of the following criteria:

- a. A written evaluation process is completed by the independent study provider; and
- b. A certificate of satisfactory completion is issued by the provider; and
- c. An evaluation assessment is issued to the licensee by the provider; and
- d. Documentation supporting such independent studies is maintained by the licensee and provided to the board as required by subrule 7.8(2).

A maximum of ten professional development hours of independent study activity will be allowed per biennium per licensee.

7.4(4) Exclusions. Types of continuing education activities which will be excluded from allowable continuing education are those in which it is not evident that the activity relates directly to the licensee's practice of professional engineering or land surveying or the management of the business concerns of the licensee's practice, or which do not comply with the board's administrative rules. Examples of activities that do not qualify as continuing education include the following:

- a. Regular employment;
- b. Toastmasters club meetings;
- c. Service club meetings or activities;
- d. Personal estate planning;

- e.* Banquet speeches unrelated to engineering;
- f.* Professional society business meeting portions of technical seminars;
- g.* Financial planning/investment seminars;
- h.* Foreign travel not related to engineering study abroad;
- i.* Personal self-improvement courses;
- j.* Real estate licensing courses;
- k.* Stress management;
- l.* Trade shows;
- m.* Peer review;
- n.* Accreditation review;
- o.* Independent study or self-study that does not meet the requirements of subrule 7.4(3);
- p.* Basic CAD and fundamental computer application courses;
- q.* Undergraduate engineering seminars.

193C—7.5(542B,272C) Biennial requirement. The biennial requirement may only be satisfied during the biennium prior to licensure renewal except for the carryover permitted.

7.5(1) Completion of 30 professional development hours, including at least 2 professional development hours in the area of professional ethics, satisfies the continuing education necessary for biennial licensure renewal in engineering or land surveying. Completion of 40 professional development hours, including 20 professional development hours in engineering and 20 professional development hours in land surveying and at least 4 professional development hours in the area of professional ethics, satisfies the continuing education necessary for biennial licensure renewal for individuals actively licensed in both engineering and land surveying. Up to 15 professional development hours may be carried forward only into the next biennium. For individuals actively licensed in both engineering and land surveying, up to 10 professional development hours for each profession may be carried forward only into the next biennium.

7.5(2) Inactive licensees are exempt from the continuing education requirements.

7.5(3) A licensee who is active in one profession and inactive in another is obligated to meet the continuing education requirements for licensure in the profession in which active licensure is maintained.

7.5(4) A new licensee is obligated to satisfy one-half of the biennial continuing education requirement at the first renewal following initial licensure. Professional engineers and professional land surveyors licensed by comity are not new licensees and are not eligible for the one-half continuing education requirement.

193C—7.6(542B,272C) Exemptions. The continuing education requirements may be reduced in proportion to the following:

1. Periods of time that the licensee serves honorably on active duty in the military services;
2. Periods of time that the licensee is licensed in and a resident of another state or district having continuing education requirements for professional engineering or land surveying and meets all requirements of that state or district for practice therein;
3. Periods of time that the licensee is a government employee working as a professional engineer or professional land surveyor and assigned to duty outside the United States; or
4. Documented periods of the licensee's active practice and absence from the United States that are approved by the board.

No exemption will be granted without a written request from the licensee with documentation of the period of absence.

193C—7.7(542B,272C) Hardships or extenuating circumstances. Upon a written request to the board, the board may, in individual cases involving hardship or extenuating circumstances, grant waivers of the continuing education requirements for a period of time not to exceed one year.

193C—7.8(542B,272C) Reports, records, and compliance review. At the time of application for license renewal, each licensee reports, on a form provided by the board, the number of professional development hours achieved during the preceding biennium.

7.8(1) Record keeping. Maintaining records to be used to support professional development hours claimed is the responsibility of the licensee. It is recommended that each licensee keep a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned. The licensee is obligated to maintain documentation of reported PDHs for two years after the period for which the form was submitted.

7.8(2) Compliance review. The board may select licensees for review of compliance with continuing education on a random basis or upon receiving information regarding noncompliance and will review compliance with continuing education for reinstatement of lapsed or inactive licenses. Each licensed board member is audited for PDH compliance for a biennium that is within each member's respective three-year appointment term. For each PDH claimed, licensees chosen for compliance review will furnish:

- a. Proof of attendance. Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance;
- b. Verification of the hours claimed; and
- c. Information about the course content.

7.8(3) Compliance review sanctions. Any discrepancy between the number of PDHs reported and the number of PDHs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any PDH, or the licensee has failed to complete the required PDHs, the licensee has 60 days from board notice to either provide further evidence of having completed the PDHs disallowed or remedy the discrepancy by completing the required number of PDHs (provided that such PDHs are not used again for the next renewal). Extension of time may be granted on an individual basis if requested by the licensee within 30 days of notification by the board. If the licensee fails to comply with the requirements of this subrule, the licensee may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the licensee willfully disregarded these requirements or falsified documentation of required PDHs, the licensee may be subject to disciplinary action as further identified in 193C—paragraphs 9.3(1)“c” and 9.3(3)“e.”

7.8(4) Out-of-state residents. A person licensed to practice engineering or land surveying or both in Iowa shall be deemed to have complied with the continuing education requirement of this state during the periods that the person is a resident of another state or district which has a continuing education requirement for engineers or land surveyors and the individual meets all requirements of that state or district for practice therein. However, if selected for compliance review, such individuals must provide documentation as specified in subrule 7.8(2).

These rules are intended to implement Iowa Code sections 272C.2, 272C.3, 542B.6, and 542B.18.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 8
“Professional Conduct of Licensees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

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Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

The rules in proposed Chapter 8 provide information on professional conduct of the licensee.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
The primary beneficiaries are members of the public who are doing business with the licensees.

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

- Quantitative description of impact:

Because the Engineering and Land Surveying Examining Board receives relatively few complaints each year (eight in 2022), costs are very low, and the Board believes that the benefits achieved justify the cost because the complicated services offered by professional engineers and land surveyors require advanced education and training. There is a potential cost to licensees when the Board takes disciplinary action, with disciplinary fines capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is on licensees who are expected to adhere to the rules and Iowans who are protected by the rules.

3. Costs to the State:

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

There are no agency fees associated with the rules of Chapter 8. Staff time is needed to review complaints against licensees regarding ethics/conduct allegations. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Since there are no fees, the primary benefit is to Iowans who are protected by these rules. To reduce or eliminate the rules would put the public at significant risk.

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

There are no cost implications. Intrusion is necessary in order to protect Iowans and visitors doing business with the licensed professionals.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Rules of professional ethics and conduct for licensed engineers and land surveyors are in place nationally. Iowa is consistent with all other licensing jurisdictions.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

Iowa does not license engineering or land surveying firms. There is no substantial impact to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
PROFESSIONAL CONDUCT OF LICENSEES

193C—8.1(542B) General statement. In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following code of professional conduct is binding upon every person holding a certificate of licensure as a professional engineer or professional land surveyor in this state. The code of professional conduct is an exercise of the police power vested in the board by the Acts of the legislature.

193C—8.2(542B) Code of professional conduct. All persons licensed under Iowa Code chapter 542B are charged with having knowledge of the existence of this code of professional conduct and are expected to be familiar with its provisions, to understand them, and to abide by them. Such knowledge includes the understanding that the practices of engineering and land surveying are a privilege, as opposed to a right, and the licensee shall be forthright and candid in statements or written response to the board or its representatives on matters pertaining to professional conduct.

8.2(1) Responsibility to the public. Licensees will conduct their professional practices in a manner that will protect life, health and property and enhance the public welfare. If their professional judgment is overruled under circumstances where safety, health and welfare of the public are endangered, they shall inform their employer or client of the possible consequences, notify such other proper authority as may be appropriate, and withdraw from further services on the project.

Licensees may neither approve nor certify engineering or land surveying documents that may be harmful to the public health and welfare and that are not in conformity with accepted engineering or land surveying standards.

8.2(2) Competency for assignments. Licensees may perform engineering or land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or professional land surveying involved. Licensees shall engage experts or advise that experts and specialists be engaged whenever the client's or employer's interests are best served by such service.

Licensees may accept an assignment on a project requiring education or experience outside their field of competence, but only to the extent that their services are restricted to those phases of the project in which they are qualified.

8.2(3) Truth in reports and testimony. Licensees, when serving as expert or technical witnesses before any court, commission, or other tribunal, may express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of their testimony. Under these circumstances, the licensee must disclose inadequate knowledge.

Licensees shall be objective and truthful in all professional reports, statements or testimony. All relevant and pertinent information shall be included in such reports, statements or testimony. Licensees shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.

8.2(4) Conflict of interest. Licensees shall:

a. Not issue statements, criticisms or arguments on engineering or land surveying matters connected with public policy which are influenced or paid for by an interested party, or parties, unless they have prefaced their comments by explicitly identifying themselves, by disclosing the identities of the party or parties on whose behalf they are speaking, and by revealing the existence of any pecuniary interest.

b. Avoid all known conflicts of interest with their employers or clients and, when unforeseen conflicts arise, shall promptly inform their employers or clients of any business association, interest, or circumstances that could influence judgment or the quality of services.

c. Not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

d. Act in professional matters for each employer or client as faithful agents or trustees and maintain full confidentiality on all matters in which the welfare of the public is not endangered.

8.2(5) Ethics. Licensees shall conduct their business and professional practices of engineering and land surveying in an ethical manner. In addition to the provisions of this chapter, the board will consider, although not necessarily be bound by, the ethical standards that address public protection issues adopted by a recognized state or national engineering or land surveying organization such as the National Society of Professional Engineers and the National Society of Professional Surveyors.

8.2(6) Unethical or illegal conduct.

a. Business practices. Licensees shall not:

(1) Pay or offer to pay, either directly or indirectly, any commission, percentage, brokerage fee, political contribution, gift, or other consideration to secure work, except to a bona fide employee or bona fide, established commercial or marketing agency retained by them or to secure positions through employment agencies.

(2) Engage in any discriminatory practice prohibited by law and shall, in the conduct of their business, employ personnel upon the basis of merit.

(3) Solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

(4) Solicit or accept an engineering or land surveying contract from a governmental body when a principal or officer of the licensee's organization serves as an elected, appointed, voting or nonvoting member of the same governmental body which is letting the contract. For purposes of this subparagraph, "governmental body" means a board, council, commission, or similar multimembered body. A licensee would not violate this provision, however, if the principal or officer of the licensee's organization who serves as a member of the governmental body plays no role in the solicitation or acceptance of the contract, and the contract would be legally permissible under applicable Iowa law, including but not limited to Iowa Code sections 68B.3, 279.7A, 331.342, and 362.5.

(5) Associate with, or permit the use of their names or firms in a business venture by, any person or firm that they know, or have reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

(6) Misrepresent pertinent facts concerning employers, employees, associates, firms, joint ventures, or past accomplishments in brochures or other presentations incident to the solicitation of employment.

b. Individual professional conduct. Licensees shall not:

(1) Use association with nonengineers, corporations or partnerships as "cloaks" for unethical acts.

(2) Violate any local, state or federal criminal law in the conduct of professional practice.

(3) Violate licensure laws of any state or territory.

(4) Affix their signatures or seals to any plans, plats or documents dealing with subject matter in which those licensees lack competence, nor to any plan, plat or document not prepared under their direct personal direction and control.

(5) Falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments.

c. Real property inspection reports. Licensees shall not:

- (1) Represent themselves as licensed professional land surveyors or professional engineers on real property inspection reports (i.e., mortgage surveys).
- (2) Place their firm names, logos, or title blocks on real property inspection reports (i.e., mortgage surveys).

193C—8.3(542B) Reporting of acts or omissions. Licensees shall report acts or omissions by a licensee that constitute negligence or carelessness. For the purposes of these rules, “negligence or carelessness” means demonstrating unreasonable lack of skill in the performance of engineering or land surveying services by failure of a licensee to maintain a reasonable standard of care in the licensee’s practice of engineering or land surveying. In the evaluation of reported acts or omissions, the board determines if the engineer or land surveyor has applied learning, skill and ability in a manner consistent with the standards of the professions ordinarily possessed and practiced in the same profession at the same time. Standards referred to in the immediately preceding sentence shall include any minimum standards adopted by this board and any standards adopted by recognized national or state engineering or land surveying organizations.

193C—8.4(542B) Standards of integrity. Licensees shall:

1. Answer all questions of a duly constituted investigative body of the state of Iowa concerning alleged violations by another person or firm.
2. Admit and accept their own errors and not distort or alter the facts to justify their own decisions when proven wrong.
3. Present information to the engineering and land surveying examining board in writing and cooperate with the board in furnishing further information or assistance required by the board, if a licensee knows or has reason to believe that another person or firm may be in violation of Iowa law or rules regarding ethics or conduct of professional engineering or professional land surveying practice.
4. Licensees cannot assist in the application of an individual they know is unqualified for licensure by reason of education, experience or character.

193C—8.5(542B) Engineering and land surveying services offered by business entities.

8.5(1) Purpose of rule. The purpose of this rule is to protect the public from misleading or deceptive advertising by business entities that hold themselves out to the public as providing professional engineering or professional land surveying services and to guard against the unlicensed practice of professional engineering or professional land surveying by persons who are not properly licensed to perform such services in the state of Iowa. This rule shall not be construed as restricting truthful advertising by business entities that appropriately place professional engineers or professional land surveyors in responsible charge of the professional services offered to and performed for the public.

8.5(2) Definitions. For purposes of this rule, the following definitions apply:

“*Business entity*” includes corporations, partnerships, limited liability companies, persons using fictitious or assumed names, or any other form of entity which may conduct business.

“*In responsible charge*” means the same as defined in Iowa Code section 542B.2(6). Indications of being in responsible charge include:

1. Obtaining or setting the project or service parameters or criteria.
2. Dictating the manner and methods by which professional services are performed.
3. Establishing procedures for quality control and authority over professional services in a manner that ensures that the professional licensee is in control of the work and of all individuals performing the work under the licensee’s supervision.
4. Spending sufficient time directly performing the work or directly supervising the work to ensure that the licensee is familiar with all significant details of the work.
5. Maintaining familiarity with the capabilities and methods of the persons performing professional services, and providing adequate training for all persons working under the licensee’s direct supervision.

6. Sustaining readily accessible contact with all persons performing professional services by direct physical proximity, or as appropriate in the licensee's professional judgment, by frequent communication, in clear and complete verbal and visual form, of information about the work being performed.

7. Specifically pertaining to land surveying, reviewing all field evidence and making all final decisions concerning the placement of survey monuments and surveyed lines.

"Professional services" includes professional engineering and professional land surveying services, as defined in Iowa Code sections 542B.2(5) and (8) and 542B.27, as applicable to the fact situation at issue.

8.5(3) General rule. Business entities offering professional services to the public must be owned, managed, or appropriately staffed by one or more professional engineers or professional land surveyors, as applicable, who are in responsible charge of all professional services offered and performed.

8.5(4) Appropriate staffing. The nature and extent of appropriate staffing by licensed professionals is necessarily a fact-based determination dependent on such factors as the nature and volume of professional services offered and performed, the risk of unlicensed practice, the impact of the professional services on the life, health and safety of the public and the public's property, and the representations made to the public. While the legal nature of the business entity's relationship (e.g., owner, manager, employee) with a licensed professional engineer or professional land surveyor is not necessarily determinative, licensed professionals must be in responsible charge of all professional services offered and performed.

8.5(5) Professional engineering or professional land surveying firms. Business entities holding themselves out to the public as professional engineering or professional land surveying firms cannot satisfy the requirements of this rule solely by retaining, through employment or contract, a licensed professional on an as-needed, occasional or consulting basis. Such an arrangement fosters unlicensed practice by the unlicensed owners or managers who place themselves in charge of determining when a licensed professional is needed. When a business entity conveys to the public that it is organized as a firm of licensed professionals, the public has a right to expect that the firm retains the full-time services of one or more licensed professionals. "Full-time" in this context is not measured by hours, but by a licensee's sustained, meaningful, and effective, direct supervision of all professional services performed, whether the firm performs services, for example, 20 hours per month or 80 hours per week.

8.5(6) Restricted services. Business entities that do not generally hold themselves out to the public as professional engineering or professional land surveying firms, but that do offer some type of professional engineering or professional land surveying service, shall be appropriately staffed by licensed professionals in a manner that (a) corresponds with the representations made to the public, (b) places licensed professionals in responsible charge of all professional services performed, and (c) guards against the unlicensed practice of professional engineering or professional land surveying.

8.5(7) Permitted practices.

a. Nothing in this rule is intended to prevent an individual or business entity from truthfully offering services as a project manager, administrator, or coordinator of a multidisciplinary project.

b. Nothing in this rule prevents a joint venture arrangement between an engineering or land surveying firm and a business entity that is not owned, managed, or staffed by professional engineers or professional land surveyors, in which the venturing entities jointly and truthfully offer professional engineering or professional land surveying services on a project-by-project basis. Licensed professional engineers and professional land surveyors who participate in such arrangements shall ensure that the public is accurately informed as to the nature of all professional services to be performed and by whom the services will be performed.

8.5(8) Remedies against licensees. Licensed professional engineers or professional land surveyors who aid and abet the unlicensed offering or practice of professional engineering or professional land surveying, or who otherwise knowingly participate in a business entity that does not comply with this rule, are engaging in unethical practices that are harmful or detrimental to the public and are subject to disciplinary action by the board.

8.5(9) *Remedies against business entities and unlicensed individuals.* The board may by order impose civil penalties against any business entity or unlicensed individual that offers or performs professional services in violation of Iowa Code chapter 542B.

These rules are intended to implement Iowa Code sections 542B.6, 542B.21 and 542B.26 and chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 9
“Complaints, Investigations and Disciplinary Action”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@dia.iowa.gov

Purpose and Summary

Proposed Chapter 9 provides protection to Iowans because it publicly defines the Board’s disciplinary authority, processes and grounds for which disciplinary action can be taken. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against the licensee’s license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Engineering and Land Surveying Examining Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Licenses may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000, per public order.

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

The primary beneficiaries are members of the public doing business with professional engineers and land surveyors. Chapter 9 contains rules directly relating to protecting the public. While a low number of complaints can call into question the extent to which a profession needs to be regulated, engineering and land surveying are highly technical and complicated in nature and require a high level of skill. The safety of Iowans depends on these professions, so the Board believes that regulation is necessary.

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

- Quantitative description of impact:

Because there is a relatively small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the cost because the complicated services offered by professional engineers and land surveyors require advanced education and training. There is a potential cost to licensees where disciplinary action is taken against them, with disciplinary fines being capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is from providing detailed information on the Board's authority and examples of what may be grounds for discipline, all designed to help protect the welfare of the public. Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of the profession.

3. Costs to the State:

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

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and coordinating investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the Board's processes. An executive officer supports the full scope of work of this Board at approximately 0.30 full-time equivalent (FTE) position. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations is very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$250 was paid into the General Fund from disciplinary fees assessed by the Board.

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

The Board believes that the benefits achieved justify the cost because the professions of engineering and land surveying require an advanced education and expertise. The Board receives a low number

of complaints and issues a small number of disciplinary actions. In 2022, the Board received eight complaints and issued two public disciplinary actions. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the professions of engineering and land surveying require an advanced education and level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive the highest quality of service from licensed professionals. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The Board's authority for disciplinary action is provided for in Iowa Code chapter 542B. No alternative methods were seriously considered.

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

Protecting the public is the primary mission of the Board. These rules give the Board the authority to fulfill its mission.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9 COMPLAINTS, INVESTIGATIONS AND DISCIPLINARY ACTION

193C—9.1(542B) Complaints and investigations.

9.1(1) Complaints. The board, upon receipt of a complaint or upon its own motion pursuant to other evidence received by the board, reviews and investigates alleged acts or omissions which reasonably constitute cause under applicable law or administrative rule for licensee discipline. Complaints may be submitted to the board office via the board's website by members of the public, including clients,

business organizations, nonprofit organizations, governmental bodies, licensees, or other individuals or entities with knowledge of possible violations of laws or rules by licensees.

9.1(2) *Form and content.* A written complaint may be submitted on forms available from the board office and on the board's website. The written complaint shall include the following information:

- a. The full name, address, and telephone number of complainant.
- b. The full name, address, and telephone number of the individual against whom the complaint is filed.
- c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions which the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.
- d. Citation of the statutes and administrative rules allegedly violated by the respondent.
- e. Evidentiary supporting documentation.
- f. Steps, if any, that have been taken by the complainant to resolve the dispute with the respondent prior to the filing of the complaint.

9.1(3) *Initial complaint screening.* All written complaints received by the board are initially screened by the board's administrator to determine whether the allegations of the complaint fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a licensee. Complaints which are clearly outside the board's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous will be referred by the board administrator to the board for closure at the next scheduled board meeting. All other complaints are referred by the board administrator to the board's disciplinary committee for committee review.

9.1(4) *Investigation of allegations.* In order to determine if probable cause exists for a hearing on the complaint, the board may cause an investigation to be made into the allegations of the complaint. It may refer the complaint to a peer review committee or investigator for investigation, review and report to the board.

9.1(5) *Informal discussion.* If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. It is not necessary for the licensee to attend the informal discussion. By electing to attend, the licensee waives the right to seek disqualification, based upon personal investigation of a board member or staff, from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges will be filed simultaneously with the consent order.

9.1(6) *Immunity.* Complainants are immune from civil liability under Iowa Code section 272C.8.

9.1(7) *Role of complainant.* The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding which the board may initiate based in whole or in part on information provided by the complainant.

9.1(8) *Role of the board.* The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

193C—9.2(542B) Ruling on the initial inquiry.

9.2(1) Dismissal. If a determination is made by the board that a complaint is without grounds or merit, the complaint will be dismissed. A letter of explanation concerning the decision of the board will be sent to the respondent and the complainant.

9.2(2) Requirement of further inquiry. If determination is made by the board to order further inquiry, the complaint and initial recommendations will be provided to the investigator(s) along with a statement specifying the information deemed necessary.

9.2(3) Acceptance of the case. If a determination is made by the board to initiate disciplinary action, the board may enter into an informal settlement or recommend formal disciplinary proceedings. The board's rules regarding informal settlement are found at 193—7.4(17A,272C).

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—9.3(17A,272C,542B,546) Grounds for discipline. The board has authority pursuant to Iowa Code chapters 542B, 17A and 272C to impose discipline for violations of those chapters and the rules promulgated thereunder and may initiate disciplinary action against a licensee holding an active, inactive or lapsed license on any of the grounds identified in Iowa Code section 542B.21.

9.3(1) Fraud or deceit in procuring or attempting to procure an initial, comity, renewal, or reinstated license includes any intentional perversion of or reckless disregard for the truth when an application, or information in support of another's application, is submitted to the board, including:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.

b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, or continuing education certificate.

c. Reporting information, such as satisfaction of continuing education, in a false manner, through overt deceit, or with reckless disregard for the truth or accuracy of the information asserted.

d. Otherwise participating in any form of fraud or misrepresentation by act or omission.

9.3(2) Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of engineering or land surveying.

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

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimum standards of acceptable and prevailing practice of engineering or land surveying in this state, including the land surveying standards set forth in Iowa Code chapters 354 and 355 and 193C—Chapters 11 and 12.

e. Engaging in engineering or land surveying practices which are outside the technical competence of the licensee without taking reasonable steps to associate with a competent licensee or other steps to ensure competent practice.

f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest, including acts or omissions described in 193C—8.3(542B).

9.3(3) Deceptive practices include, but are not limited to, the following:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of engineering or land surveying.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation.

d. Falsification of business or client records.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education or as a condition of probation, or in a reference submitted for an examination or a license applicant or in any reports identified in this rule or 193C—8.3(542B).

f. Knowingly presenting as one's own the license, signature, or seal of another or of a fictitious licensee, or otherwise falsely impersonating a person holding an engineering or land surveying license.

g. Representing oneself as a professional engineer or professional land surveyor after the license has been suspended, revoked, surrendered, or placed on inactive status or has lapsed.

h. Fraud in representations as to skill or ability.

i. Any violation of Iowa Code section 542B.16 or associated rules in 193C—Chapter 6 involving a licensee's seal or certificate.

9.3(4) Behaviors and conduct which are unethical or harmful or detrimental to the public include, but are not limited to, the following actions:

a. A violation of the code of professional conduct in 193C—Chapter 8.

b. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of engineering or land surveying or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior could occur within such practice and, if so, would place the public at risk.

c. Aiding or abetting a violation of a provision of Iowa Code section 542B.27(1).

9.3(5) Lack of proper qualifications, as provided in Iowa Code Section 272C.3(2) "b" includes, but is not limited to:

a. Continuing to practice as an engineer or land surveyor without satisfying the continuing education required for license renewal.

b. Violation of Iowa Code section 542B.21(4), which adversely affects the licensee's ability to practice in a safe and competent manner.

9.3(6) Professional misconduct which includes, but is not limited to, revocation, suspension, or other disciplinary action taken against a licensee by a licensing authority of this state or another state, territory, or country. "Disciplinary action" includes a voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. A stay by an appellate court does not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated. A licensee shall notify the board of such disciplinary action within 30 days of the disciplinary action.

9.3(7) Willful or repeated violations include the willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542B or any administrative rule adopted by the board in the administration or enforcement of such chapters.

9.3(8) Conviction of felony includes the conviction of a felony under the laws of the United States, of any state or possession of the United States, or of any other country. The board will vacate any discipline based solely on a conviction, if that conviction is overturned or reversed by a court of last resort.

193C—9.4(542B) Disciplinary findings and sanctions. The board's decision may include one or more of the following findings or sanctions:

1. Exoneration of respondent.
2. Revocation of license.
3. Suspension of license until further order of the board or for a specified period.
4. Nonrenewal of license.
5. Prohibition, until further order of the board or for a specific period, of engaging in specified procedures, methods or acts.
6. Probation.
7. Requirement of additional education or training.
8. Requirement of reexamination.
9. Issuance of a reprimand.
10. Imposition of civil penalties.
11. Issuance of citation and warning.
12. Desk review.

13. Other sanctions allowed by law as may be appropriate.

193C—9.5(272C) Civil penalties. In addition to other disciplinary options, the board may assess civil penalties of up to \$1,000 per violation against licensees who violate any provision of rule 193C—9.3(17A,272C,542B,546). Factors the board may consider when determining whether and in what amount to assess civil penalties include:

1. Whether other forms of discipline are being imposed for the same violation.
2. Whether the amount imposed will be a substantial economic deterrent to the violation.
3. The circumstances leading to the violation.
4. The severity of the violation and the risk of harm to the public.
5. The economic benefits gained by the licensee as a result of the violation.
6. The interest of the public.
7. Evidence of reform or remedial action.
8. Time elapsed since the violation occurred.
9. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.
10. The clarity of the issue involved.
11. Whether the violation was willful and intentional.
12. Whether the licensee acted in bad faith.
13. The extent to which the licensee cooperated with the board.
14. Whether the licensee practiced professional engineering or professional land surveying with a lapsed, inactive, suspended or revoked license.

This rule is intended to implement Iowa Code section 542B.22.

193C—9.6(542B) Publication of decisions. In addition to publication requirements found at 193—subrule 7.30(3), the following notifications shall be issued:

1. Following suspension of a professional land surveyor's license, notification must be issued to the county recorders and county auditors of the county of residence and immediately adjacent counties in Iowa.
2. Following revocation of a professional land surveyor's license, notification must be mailed to all county auditors in Iowa and the county recorders in the county of residence and immediately adjacent counties in Iowa.
3. Following the suspension or revocation of the license of a professional engineer or professional land surveyor, notification is issued to other boards of examiners for engineers and land surveyors under the jurisdiction of the government of the United States. This notification may be made through the National Council of Examiners for Engineering and Surveying or other national organizations recognized by the board. In addition, if the licensee is known to be registered in another nation in North America, the appropriate board(s) are notified of the action.

193C—9.7(542B) Disputes between licensees and clients. Reports from the insurance commissioner or other agencies on the results of judgments or settlements of disputes arising from malpractice claims or other actions between professional engineers or professional land surveyors and their clients may be referred to counsel or peer review committee. The counsel or peer review committee will investigate the report for violation of the statutes or rules governing the practice or conduct of the licensee. The counsel or peer review committee will advise the board of any probable violations, any further action required, or recommend dismissal from further consideration.

193C—9.8(272C,542) Confidentiality of complaint and investigative information.

9.8(1) General provisions. All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code section 272C.6(4). Such information shall not be released to any person except as provided in that section.

9.8(2) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 546.10(9) [2007 Iowa Acts, Senate File 360, section 7], the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board will not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release information to a licensee that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee and prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review or investigative report or expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including those initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may release information from a peer review or consultant's report when soliciting the licensee's position will aid in making the probable cause determination and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

These rules are intended to implement Iowa Code chapter 17A and sections 542B.2, 542B.22, and 272C.6.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 10
“Peer Review”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

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Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@iowa.gov

Purpose and Summary

Chapter 10 covers peer review as it relates to disciplinary investigations.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Investigations may be completed by investigators on staff. If a case reaches the level where the Engineering and Land Surveying Examining Board determines that an individual with specialized knowledge and skills is necessary, a peer reviewer is hired as an investigator at a rate of \$150 an hour with a fee cap of \$1,000. In 2022 there were four peer reviewers/investigators hired by the Board.

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

The primary beneficiaries are members of the public doing business with professional engineers and land surveyors. Chapter 10 contains rules directly relating to protecting the public.

While a low number of complaints can call into question the extent to which a profession needs to be regulated, engineering and land surveying are professions that are highly technical and complicated in nature and require a high level of skill. Iowans rely on the highest quality professional engineers and land surveyors, so the Board believes that regulation is necessary.

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

- Quantitative description of impact:

Because there are very few complaints that require an investigation outside of staff, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the complicated services offered by the engineering and land surveying profession require advanced education and training. There is a potential cost to licensees where disciplinary action is taken against them, with disciplinary fines being capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is in providing detailed information on the Board's process to resolve complaints filed by the public. Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and coordinating investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the Board's processes. An executive officer supports the full scope of work of this Board at approximately 0.30 of a full-time equivalent (FTE) position. There is also the potential cost to the agency if a peer reviewer is hired as an investigator at a rate of \$150 an hour with a fee cap of \$1,000. In 2022 there were four peer reviewers/investigators hired by the Board. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by the agency which is funded by licensing fees. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The Board believes that the benefits achieved justify the low cost because the professions of engineering and land surveying require an advanced education and expertise. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received eight complaints and issued two public disciplinary actions. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the professions of engineering and land surveying require an advanced education and level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive the highest quality of service from licensed professionals. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The Board's authority for disciplinary action is provided for in Iowa Code chapter 542B. No alternative methods were seriously considered.

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

Protecting the public is the primary mission of the Board. These rules give the Board the authority to fulfill its mission.

Small Business Impact

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

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

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

Iowa does not license engineering or land surveying firms. There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10 PEER REVIEW

193C—10.1(542B,272C) Peer review. The board may appoint a peer reviewer, or multiple peer reviewers, for the investigation of a complaint about the acts or omissions of one or more licensees.

10.1(1) Peer review. Peer reviewers are generally licensed engineers or licensed land surveyors or both, as determined by the board, who are selected for their knowledge and experience in the type of engineering or land surveying involved in the complaint.

An individual is ineligible as a peer reviewer in accordance with the standard for disqualification found at 193—subrule 7.14(1). If a peer reviewer is unable to serve after an investigation has begun, the peer reviewer will notify the board office.

10.1(2) Authority. The peer reviewer's investigation may include activities such as interviewing the complainant, the respondent, individuals with knowledge of the alleged violation, and individuals

with knowledge of the respondent's practice in the community; gathering documents; conducting site visits; and performing independent analyses as deemed necessary. Although the board does not become involved in a complaint investigation, the board may give specific instructions to the peer reviewer regarding the scope of the investigation. In the course of the investigation, the peer reviewer will refrain from advising the complainant or respondent on actions that the board might take.

10.1(3) *Term of service.* The peer reviewer serves at the pleasure of the board. The board may dismiss any peer reviewer or add new peer reviewers at any time.

10.1(4) *Compensation.* The terms of payment as authorized by the peer review agreement may vary based on the nature and complexity of each assignment. The peer reviewer will be additionally entitled to reimbursement of expenses directly related to the peer review process, deposition or hearing preparation, or deposition or hearing testimony, such as mileage, meals, or out-of-pocket charges for securing copies of documents. Expenses will be reimbursed as allowed under the manuals and guidelines published by the Iowa department of administrative services, state accounting enterprise. The peer reviewer cannot hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

193C—10.2(542B,272C) Reports. Each peer reviewer will submit a written report to the board within 90 days of the peer review assignment, unless an extension is granted by the board.

10.2(1) *Components of the report.* The report will include:

- a. A statement of the charge to the peer reviewer;
- b. A description of the actions taken by the peer reviewer in the peer reviewer's investigation, including but not limited to document review, interviews and site visits;
- c. A summary of the peer reviewer's findings, including (1) the peer reviewer's opinion as to whether a violation has occurred, (2) citation of the Iowa Code section(s) and Iowa Administrative Code rule(s) violated, and (3) the peer reviewer's opinion of the seriousness of the violation; and
- d. A recommendation.

In the case of a land surveyor peer reviewer report, the report must be plat-specific as to the violations.

10.2(2) *Recommended action.* The peer reviewer report will recommend one of the following:

- a. Dismissal of the complaint,
- b. Further investigation, or
- c. Disciplinary proceedings.

If the peer reviewer recommends further investigation or disciplinary proceedings, supporting information must be submitted to the board, including citation of the specific Iowa Code section(s) and Iowa Administrative Code rule(s) violated.

10.2(3) *Disciplinary recommendations.* When recommending disciplinary proceedings, a peer reviewer will not suggest a particular form of discipline, but may provide guidance on the severity of the violations that prompted the recommendation and may identify professional areas in which the licensee needs additional education, experience or monitoring in order to safely practice.

193C—10.3(542B,272C) Confidentiality. The peer reviewer will not discuss or reveal the peer reviewer's findings and conclusions with any party other than the board (through the peer reviewer's report to the board) or board staff.

193C—10.4(542B,272C) Testimony. Peer reviewers may be required to testify in the event of formal disciplinary proceedings.

These rules are intended to implement Iowa Code section 272C.3.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 11
“Minimum Standards for Property Surveys”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@iowa.gov

Purpose and Summary

The rules of Chapter 11 provide information on minimum standards for property surveys.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:

The beneficiaries are licensees who use the information in the delivery of their services and members of the public doing business with licensees. Chapter 11 contains rules directly relating to protecting the public.

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

- Quantitative description of impact:

The Engineering and Land Surveying Examining Board receives very few complaints associated with alleged violations of the minimum standards of property surveys, but minimum standards are critical to protecting Iowans. The Board believes that the benefits achieved justify the costs because the complicated services offered by land surveyors require advanced education and training. There is a potential cost to licensees when the Board takes disciplinary action, with disciplinary fines capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is in providing detailed information on what is included in a property survey. The surveys provide uniformity and assist in managing expectations of both licensees and members of the public.

3. Costs to the State:

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

The rules themselves do not have any associated fees, and there is no staff time involved. As a result, there is no cost to the state agency.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

There are no costs involved. Iowans directly benefit from these rules, which help define what can be expected in doing business with land surveyors.

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

There are no cost implications. Intrusion is necessary in order to protect Iowans doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

The Board engaged in discussions regarding all the chapters of Engineering and Land Surveying Examining Board[193C]. No alternative methods were considered because these rules play an important role in protecting the public. Protecting the public is the primary mission of the Board.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

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

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

Iowa does not license land surveying firms. There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
MINIMUM STANDARDS FOR PROPERTY SURVEYS

193C—11.1(542B) Scope. Each professional land surveyor will comply with the minimum standards for property surveys described by statute or administrative rule. The minimum standards in this chapter apply to all property surveys performed in this state except those done for acquisition plats as described in Iowa Code chapter 354.

193C—11.2(542B) Definitions. For the purposes of these rules, the following definitions apply:

“*Plat*” means both a plat of survey and a subdivision plat as those terms are defined in Iowa Code section 355.1.

“*Property survey*” means any land survey performed for the purpose of describing, monumenting, retracing and establishing boundary lines, dividing, subdividing, or platting one or more parcels of land.

“*Retrace*” means following along a previously established line to logical termini.

193C—11.3(542B) Boundary location. Every property survey shall be made in accordance with the legal description (record title) boundaries as nearly as is practicable. The surveyor will acquire data necessary to retrace record title boundaries, centerlines, and other boundary line locations. The surveyor will analyze the data and determine the position of the boundaries of the parcel being surveyed. The surveyor will make a field survey, locating and connecting monuments necessary for location of the parcel, and coordinate the facts of such survey with the analysis. The surveyor will set monuments marking the corners of such parcel unless monuments already exist at such corners.

193C—11.4(542B) Descriptions. Descriptions defining land boundaries written for conveyance or other purposes shall be complete, providing definite and unequivocal identification of lines or boundaries. The description must contain dimensions sufficient to enable the description to be platted and retraced and describe the land surveyed either by government lot or by quarter-quarter section or by quarter section and identify the section, township, range and county; and by metes and bounds commencing with a corner monumented and established in the U.S. Public Land Survey System; or if such land is located in a recorded subdivision or recorded addition thereto, then by the number or other description of the lot, block or subdivision thereof which has been previously tied to a corner monumented and established by the U.S. Public Land Survey System. If the parcel is described by metes and bounds, it may be referenced to known lot or block corners in recorded subdivision or additions.

193C—11.5(542B) Plats. A plat shall be drawn for every property survey performed showing information developed by the survey and including the following elements:

11.5(1) The plat is drawn to a convenient scale which is clearly stated and graphically illustrated by a bar scale on every plat sheet.

11.5(2) The plat shows the length and bearing of the boundaries of the parcels surveyed. Where the boundary lines show bearing, lengths or locations which vary from those recorded in deeds, abutting

plats or other instruments, the following note is placed along such lines: “recorded as (show recorded bearing, length or location).”

11.5(3) The plat shows and identifies all monuments necessary for the location of the parcel and indicates whether such monuments were found or placed and includes an accurate description of each monument consisting of size, shape, material type, capped with license number, and color as applicable.

11.5(4) The plat is captioned to identify the person for whom the survey was made and the date of the survey and describes the parcel as provided in rule 193C—11.4(542B) above.

11.5(5) The plat shows that record title boundaries, centerlines, and other boundary lines were retraced to monuments found or placed by the surveyor.

11.5(6) The plat shows that the survey is tied to a physically monumented land line which is identified by two U.S. Public Land Survey System corners or by two physically monumented corners of a recorded subdivision. The plat shows a distance relationship measured by the surveyor between the two corners on the physically monumented land line. The physically monumented land line shall be germane to the survey of the lot, parcel, or tract.

11.5(7) The plat bears the signature of the professional land surveyor, a statement certifying that the work was performed by the surveyor or under the surveyor’s direct personal supervision, the date of signature, and the surveyor’s Iowa license number and legible seal as provided in rule 193C—6.1(542B).

11.5(8) The surveyor shall record every plat and description, excluding subdivision plats, with the county recorder no later than 30 days after signature on the plat by the surveyor.

193C—11.6(542B) Measurements.

11.6(1) Measurements may only be made with instruments and methods capable of attaining the required accuracy for the particular problem involved.

11.6(2) Measurements as placed on the plat shall be in conformance with the capabilities of the instruments used.

11.6(3) The unadjusted closure for all closed traverse surveys shall be not greater than 1 in 5,000 and, for subdivision boundaries, 1 in 10,000.

11.6(4) In a closed traverse, the sum of the measured angles shall agree with the theoretical sum by a difference not greater than 30 seconds times the square root of the number of angles.

11.6(5) The unadjusted error of field measurements shall not be greater than 1 in 5,000.

11.6(6) The relative positional tolerance at the 95 percent confidence level shall be as follows:

a. For subdivision boundaries: $\pm(0.13 \text{ feet} + 1:10,000)$

b. For all other land surveying: $\pm(0.26 \text{ feet} + 1:5,000)$

11.6(7) Bearings or angles on any property survey plat shall be shown to the nearest one minute; distance shall be shown to the nearest one-tenth foot.

193C—11.7(542B) Monuments. Monuments shall adhere to Iowa Code section 355.6. See rule 193C—11.3(542B).

These rules are intended to implement Iowa Code sections 355.3 and 542B.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 12
“Minimum Standards for U.S. Public Land Survey Corner Certificates”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@iowa.gov

Purpose and Summary

The rules of Chapter 12 provide information on minimum standards for U.S. Public Land Survey Corner Certificates.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensed land surveyors will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:

The beneficiaries are licensees who use the information in the delivery of their services and members of the public doing business with licensees. Chapter 12 contains rules directly relating to protecting the public.

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

- Quantitative description of impact:

The economic impact of a land surveyor using due care to accurately prepare a U.S. Public Land Survey Corner Certificate is not quantifiable.

- Qualitative description of impact:

The impact is in providing detailed information on what is included in a public land survey. The surveys provide uniformity and assist in managing expectations of both licensees and individuals doing business with licensees.

3. Costs to the State:

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

The rules themselves do not have any associated fees, and there is no staff time involved. As a result, there is no cost to the state agency.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

There are no costs involved. Iowans directly benefit from these rules which help define what can be expected in doing business with land surveyors.

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

There are no cost implications. Intrusion is necessary in order to protect Iowans doing business with these licensed professionals.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

The Engineering and Land Surveying Examining Board[193C] engaged in discussions regarding all the chapters of 193C. No alternative methods were considered because these rules play an important role in protecting the public. Protecting the public is the primary mission of the Board.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

Iowa does not license land surveying firms. There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
MINIMUM STANDARDS FOR U.S. PUBLIC LAND SURVEY
CORNER CERTIFICATES

193C—12.1(542B) General statement. Each professional land surveyor will comply with the minimum standards for preparing a U.S. Public Land Survey Corner Certificate as described by statute or administrative rule. The minimum standards in this chapter apply to every corner certificate prepared in this state.

193C—12.2(355) U.S. Public Land Survey Corner Certificate.

12.2(1) A corner is considered a part of the U.S. Public Land Survey System if it has the status of a corner of a:

- Quarter-quarter section or larger aliquot part of a section.
- Fractional quarter-quarter section or larger fractional part of a section.
- Government lot.

12.2(2) A U.S. Public Land Survey Corner Certificate shall be prepared by the surveyor as part of any land surveying which includes the use of a U.S. Public Land Survey System corner if one or more of the following conditions exist:

- There is no certificate for the corner monument on file with the recorder of the county in which the corner is located.
- The surveyor in responsible charge of the land surveying accepts a corner position which differs from that shown in the public records of the county in which the corner is located.
- The corner monument is replaced or modified in any way.
- The reference ties in an existing public record are incorrect or missing.

12.2(3) A U.S. Public Land Survey Corner Certificate shall comply with the following requirements:

- The identity of the corner monument, with reference to the U.S. Public Land Survey System, shall be clearly indicated.
- The certificate contains a narrative explaining:
 - The reason for preparing the certificate.
 - The evidence and detailed procedure used in establishing or confirming the corner position whether found or placed.
 - The monumentation found or placed perpetuating the corner position with an accurate description of each monument including but not limited to size, shape, material type, capped with license number, and color.
 - The extent of the search for an existing monument when the corner is reset as obliterated or lost.
- The certificate contains a plan-view drawing depicting:
 - Relevant monuments including the reference monumentation and an accurate description thereof.
 - Physical surroundings including highway and street centerlines, fences, structures and other artificial or natural objects as applicable that would facilitate recovery of the corner.
 - Reference ties in sufficient detail to enable recovery of the corner, including at least three reference ties from the corner to durable physical objects near the corner which are located so that the

intersection of any two of the ties will yield a strong corner position recovery. All ties are measured to one-hundredth of a foot.

d. The certificate bears the signature of the professional land surveyor, a statement certifying that the work was performed by the surveyor or under the surveyor's direct personal supervision, the date of signature, and the surveyor's Iowa license number and legible seal as provided in rule 193C—6.1(542B).

12.2(4) The surveyor shall record the required U.S. Public Land Survey Corner Certificate and forward a copy to the county engineer of the county in which the corner is located within 30 days after completion of the surveying.

These rules are intended to implement Iowa Code sections 355.3, 355.11 and 542B.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193C—Chapter 13
“Civil Penalties for Unlicensed Practice”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 542B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 542B

Public Hearing

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

November 21, 2023
4 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

The Department of Inspections, Appeals, and Licensing may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director’s report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Robert Lampe, Board Administrator
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Email: robert.lampe@iowa.gov

Purpose and Summary

Chapter 13 provides helpful information to licensees and members of the public regarding civil penalties the Engineering and Land Surveying Examining Board may impose as part of regulating the professions. This is important to the public because it creates a shared understanding of options available to the Board when a nonlicensee engages in activities requiring a license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against nonlicensees for those items outlined, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs to the general public. Unlicensed individuals may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

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

The primary beneficiaries are members of the public. Chapter 13 contains rules directly relating to protecting the public. While a low number of complaints can call into question the extent to which a profession needs to be regulated, engineering and land surveying are professions that are highly technical and complicated in nature and require a high level of skill. Iowans rely on the engineering and land surveying professions, so the Board believes that regulation is necessary.

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

- Quantitative description of impact:

Because there is a relatively small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost achieved because the complicated services offered by the engineering and land surveying professions require advanced education and training. There is a potential cost to an individual where disciplinary action is taken against them, with disciplinary fines being capped at \$1,000 per offense.

- Qualitative description of impact:

The impact is in providing detailed information on the Board's authority and examples of what may be grounds for discipline, all designed to help protect the welfare of the public.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and coordinating investigations. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the Board's processes. An executive officer supports the full scope of work of this Board at approximately 0.30 of a full-time equivalent (FTE) position. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by the individual, not the State. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$250 was paid into the General Fund by disciplinary fees assessed by the Board.

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

The Board believes that the benefits achieved justify the low cost because the professions of engineering and land surveying require an advanced education and expertise. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received eight complaints and issued two public disciplinary actions, but none regarding unlicensed practice. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the professions of engineering and land surveying require an advanced education and level of skill, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive the highest quality of service. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The Board's authority for disciplinary action is provided for in Iowa Code chapter 542B. No alternative methods were seriously considered.

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

Protecting the public is the primary mission of the Board. These rules give the Board the authority to fulfill its mission.

Small Business Impact

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

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

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

This Board does not license engineering or land surveying firms. There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193C—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
CIVIL PENALTIES FOR UNLICENSED PRACTICE

193C—13.1(542B) General statement. The board may impose civil penalties by order against a person who is not licensed as an engineer or land surveyor pursuant to Iowa Code chapter 542B based on the unlawful practices specified in Iowa Code section 542B.27. In addition to the procedures set forth in Iowa Code section 542B.27, this rule shall apply.

13.1(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 542B.27 shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. A reference to the particular sections of the statutes and rules involved.
- c. A short and plain statement of the alleged unlawful practice.
- d. The dollar amount of the proposed civil penalty.

e. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.

f. The address to which the written request for hearing will be made.

13.1(2) Nonlicensees must request a hearing within 30 days of the date the notice is mailed if served through restricted certified mail to the last-known address or within 30 days of the date of service if service is accepted or made in accordance with Rule of Civil Procedure 56.1. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

13.1(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

13.1(4) If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to a disciplinary case against a licensed engineer or land surveyor.

13.1(5) In addition to the factors set forth in Iowa Code section 542B.27, the board may consider the following when determining the amount of civil penalty to impose, if any:

- a.* The time elapsed since the unlawful practice occurred.
- b.* Evidence of reform or remedial actions.
- c.* Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
- d.* Whether the violation involved an element of deception.
- e.* Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
- f.* The clarity of the issue involved.
- g.* Whether the violation was willful and intentional.
- h.* Whether the nonlicensee acted in bad faith.
- i.* The extent to which the nonlicensee cooperated with the board.

13.1(6) A nonlicensee may waive the right to a hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

13.1(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Examiners for Engineering and Surveying, and other entities. Hearings shall be open to the public.

This rule is intended to implement Iowa Code section 542B.27.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 361—Chapters 1, 5, and 6
“Group Insurance for State Employees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 509A.8

State or federal law(s) implemented by the rulemaking: Iowa Code sections 509A.6 and 509A.12

Public Hearing

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

November 27, 2023
11:30 a.m.

Room G9, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Executive Council no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nate Ristow
Governor’s Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Purpose and Summary

This proposed rulemaking authorizes the director of the Department of Administrative Services (DAS) to administer the deferred compensation and health benefits programs for state employees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Taxpayers and public employees will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
State employees, health insurers, health care providers, and Iowans generally will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
DAS incurs \$1.4 million in operational costs to administer the programs. The State of Iowa also matches up to \$75 per month for employees’ contributions into the deferred compensation program and pays approximately 90 percent of the health care premium cost. These costs are covered by tax revenues.
State employees also incur some costs for the employee health care premium contribution, approximately 10 percent of the health care premium cost. State employees can also divert current income to deferred income.
 - Qualitative description of impact:

State employees benefit from the existence of deferred compensation and health insurance through their employer. Health insurers and health care providers benefit from state employee customers and employer subsidized premiums. Iowans generally benefit from the ability of the State to attract high-caliber employees with employer benefits such as health insurance and deferred compensation programs.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
DAS incurs \$1.4 million in operational costs to administer the programs.
- Anticipated effect on state revenues:
There is no impact on state revenues.

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

The costs are justified by the ability of the State to compete for excellent employees. The State must provide benefits on par with private sector competitors for the available workforce.

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

This rulemaking simply authorizes the DAS Director to administer the deferred compensation and health benefits programs and cross-references DAS rules. Less costly alternatives would only exist through changes to DAS rules, which are not adopted in this rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
No alternative methods were considered. DAS is the appropriate state entity to administer these programs.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The Executive Council does not have staff that can administer the program, but DAS is equipped to handle the workload.

Small Business Impact

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

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

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

The rulemaking does not have a significant impact on small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following new 361—Chapter 1:

CHAPTER 1
GROUP INSURANCE FOR STATE EMPLOYEES

361—1.1(509A) Administration. The executive council authorized the director of the department of administrative services or designee to administer the deferred compensation program and the health maintenance organization program for employees of the state of Iowa. The rules for administering the program are as provided for in 11—Chapter 64.

This rule is intended to implement Iowa Code sections 509A.6 and 509A.12.

ITEM 2. Rescind and reserve **361—Chapter 5.**

ITEM 3. Rescind and reserve **361—Chapter 6.**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 361—Chapters 2 and 7
“Contingent Fund—Disaster Aid”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 29C.20
State or federal law(s) implemented by the rulemaking: Iowa Code section 29C.20

Public Hearing

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

November 27, 2023
11:45 a.m.

Room G9, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Executive Council no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nate Ristow
Governor’s Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to enumerate policies, responsibilities, and procedures adopted by the Executive Council of the State of Iowa in order to provide guidance for administering the state Disaster Contingency Fund.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Communities seeking to prepare and recover from natural disasters will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Communities seeking to prepare and recover from natural disasters will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Eleven communities have benefited from \$5,822,770 in state contingency loans since 2010. The Fund has disbursed about \$1 million per year over the past four years to address disaster readiness and recovery.
 - Qualitative description of impact:
The rules impose minimal costs on the public. Local governments have an obligation to use their own resources as much as possible before seeking assistance from the Fund.

3. Costs to the State:

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

The Department of Homeland Security and Emergency Management incurs costs to process applications.

- Anticipated effect on state revenues:

The rulemaking is unlikely to have any impact on state revenues, though it may improve the efficiency of processing applications.

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

The cost of inaction is high since some communities may face greater damages from natural disasters without the ability to access these funds to prepare for natural disasters.

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

The process could be simply first come, first served.

6. Alternative methods considered by the agency:

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

Elimination of the application process and making awards on a first-come, first-served basis was considered.

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

A process without oversight could lead to inefficient use of state resources or fraud, and a first-come, first-served basis would not allow for evaluation and prioritization of projects based on need, impact, and viability.

Small Business Impact

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

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

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

The rules have no significant impact on small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 361—Chapter 2:

CHAPTER 2 CONTINGENT FUND—DISASTER AID

361—2.1(29C) Purpose. The purpose of these rules is to enumerate policies, responsibilities, and procedures adopted by the executive council of the state of Iowa in order to provide guidance for administering the state disaster contingency fund as described in Iowa Code section 29C.20.

361—2.2(29C) Definitions. The definitions set forth in Iowa Code chapter 29C are incorporated herein by reference.

361—2.3(29C) Policy. It is the policy of the state of Iowa to maintain an organization and procedures for providing supplemental assistance by the state to governmental subdivisions in the achievement of improved disaster readiness and to recover from the effects of a disaster.

361—2.4(29C) Program responsibilities and procedures.

2.4(1) Governor. The governor may proclaim a state of disaster emergency in accordance with Iowa Code section 29C.6.

2.4(2) Government subdivisions. Governmental subdivisions will:

- a. Make every effort to avert and recover from the disaster with their own resources.
- b. Maintain detailed accounts of disaster expenses.
- c. Submit to the department a request for a loan. The initial request constitutes a letter on official agency letterhead briefly describing the effect of the disaster or action on the governmental subdivision and the immediate financial inability to meet the continuing obligations of local government.
- d. Include in the initial letter request Form SDA-1, Form SDA-2, Form SDA-3, and Form SDA-3A as well as the State of Iowa Contingent Fund Loan Contact and Information Sheet.
- e. Initiate action to implement annual emergency levy as authorized by Iowa Code sections 24.6 and 384.8, in order to expedite repayment of loan.

2.4(3) Director. The director will:

- a. Prepare and maintain current rules for issuance by the executive council, providing for the administration of the contingent fund—disaster aid.
- b. Coordinate, as necessary, actions by other departments and agencies necessary to the administration of the contingent fund—disaster aid.
- c. Report each fiscal year to the governor and the executive council on activities in connection with administration of the contingent fund—disaster aid including, but not limited to, a description of each disaster of a magnitude sufficient to warrant recommendations concerning applications for loans to the executive council. Such description is to include the kind and scope of the disaster, the disposition of government subdivision applications for loans, and the total of loan approvals for the fiscal year.
- d. The director, upon receipt of an initial request for assistance supported by all appropriate forms and documentation, will advise the secretary of the executive council of such request and will furnish copies of all accompanying documents.
- e. The director will submit a recommendation to the executive council as to eligibility and entitlement of the requesting governmental subdivision on Form SDA-4 and Form SDA-4A.

2.4(4) Executive council. The executive council will:

- a. Decide if the contingent fund—disaster aid is justified by the application and showing, and, if so, the amount of the loan(s) to be made.
- b. Develop and publish the form and procedures for applying for the contingent fund—disaster aid and issue rules describing the administration of the contingent fund – disaster aid.
- c. Designate and instruct appropriate state departments and agencies to assist the director, the department, in the administration of the contingent fund—disaster aid by loan or use of personnel equipment and facilities.
- d. Consider the information furnished by the governmental subdivisions requesting loans, the report and recommendation of the director and decide which of the governmental subdivisions are eligible, and if so, the amount and terms reflecting approved eligibility.

The aggregate total of the loans cannot exceed \$1 million during a fiscal year.

2.4(5) *Department of management.* The department of management will execute loans in the amounts, and as scheduled, to government subdivisions as approved by the executive council and maintain appropriate accounts.

2.4(6) *State auditor actions.* The auditor will audit the accounts of government subdivisions to ensure that loans have been applied in accordance with determined eligibility and will make an audit report to the executive council.

361—2.5(29C) Eligibility for contingent fund—disaster aid loans.

2.5(1) To be eligible for contingent fund—disaster aid loans, a governmental subdivision demonstrates an immediate financial inability to meet the continuing obligations of local government through a showing of obligations and expenditures necessitated by an actual or potential disaster proclaimed a state of disaster emergency by the governor.

2.5(2) The loan, if made, may only be up to a limit of 75 percent of the showing of obligations and expenditures. The loan, without interest, may be repaid by the maximum annual emergency levy as authorized by Iowa Code sections 24.6 and 384.8. The loan shall be repaid within 20 years.

361—2.6(29C) Forms and documents.

2.6(1) SDA forms.

- a.* Form SDA-1 “Certified True Copy of Resolution of Governing Body.”
- b.* Form SDA-2 “Certificate by Authorized Requesting Official to Accompany Application for State Disaster Aid.”
- c.* Form SDA-3 “Application for Financial State Disaster Aid.”
- d.* Form SDA-3A “Resolution.”
- e.* Form SDA-4 “Report and Recommendation of the Director, Iowa Department of Homeland Security and Emergency Management on Application for State Disaster Aid.”
- f.* Form SDA-4A “Review of Application for State Disaster Aid.”

2.6(2) “Request from Applicant” as described in 2.4(2) “c.”

2.6(3) “State of Iowa Contingent Fund Loan Contact and Information Sheet.”

These rules are intended to implement Iowa Code section 29C.20.

ITEM 2. Rescind and reserve **361—Chapter 7.**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 361—Chapters 3 and 11
“Inheritance Tax Payments”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 450.6
State or federal law(s) implemented by the rulemaking: Iowa Code section 450.6

Public Hearing

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

November 27, 2023
12 noon

Room G9, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Executive Council no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nate Ristow
Governor’s Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Purpose and Summary

This proposed rulemaking provides the criteria by which the Executive Council will approve an inheritance tax credit for transfer of property to a public entity.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Persons who owe inheritance tax will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Persons who owe inheritance tax, state and local governments will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There are minimal costs to apply for the credit and obtain certification from the transferee government. Actual costs are hard to identify because the Department of Revenue is not aware of anyone ever utilizing this credit.
 - Qualitative description of impact:
An individual must apply to the Executive Council to be granted the credit. The local government that received the transferred land must certify the transfer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
These costs are negligible because no one uses this credit.
- Anticipated effect on state revenues:
No effect on state revenues is anticipated.

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

If someone wants to claim this credit before the inheritance tax sunsets in 2025, the costs imposed by this rule are very low. Without this chapter, the process for claiming the credit would be unclear.

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

The limitations on transfer of land could be loosened, which may encourage more individuals to use the credit.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
Alternative methods were not seriously considered at this time because the inheritance tax sunsets in two years.

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

The inheritance tax sunsets in two years, so there is no reason to change the existing process for claiming the credit at this time.

Small Business Impact

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

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

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

The rule does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 361—Chapter 3:

CHAPTER 3 INHERITANCE TAX PAYMENTS

361—3.1(450) Prior tax payment. If the inheritance tax has been paid and the payment is not excessive and, therefore, not subject to refund under Iowa Code section 450.94(3), the council will not approve, as a tax credit, any property transfer as a substitute for the prior tax payment.

361—3.2(450) Real property and tangible personal property. The tax credit is applicable for transfers of real property or of tangible personal property located in Iowa. Transfers of intangible property or of property located outside of Iowa will never qualify for the tax credit.

3.2(1) *Real property.* The executive council will not approve a credit for a transfer of a joint interest in real property or for property which is encumbered by liens. However, the council may approve a credit for an interest in real property which is less than full legal and equitable title if the interest is an easement for public access, a conservation or preservation easement, dedication for preserves or for other public use, or other similar interest which by virtue of the location and nature of the property is of significant, unique value to the public or to the environment. Property encumbered by liens of creditors will not qualify for the tax credit. Proposals to transfer a partial interest will not qualify for the tax credit.

3.2(2) *Tangible personal property.* Tangible personal property is tangible property which can be touched or handled. It is corporeal and is contrasted with intangible property. Intangible property includes but is not limited to cash, choses in action, copyrights, patents, stocks, bonds, trademarks, or annuities. *Ramco, Inc. v. Director, Department of Revenue*, 248 N.W.2d 122 (Iowa 1976).

361—3.3(450) Type, use, and purpose of transfers. The transferred property for which tax credit will be claimed should be useful to the public generally. Thus, for example, transfers of real property to be dedicated and used as a park or wildlife area will generally be approved by the council for the tax credit. In addition, at the time of the transfer, the governmental entity receiving the property should intend to own and use it for a public purpose for an indefinite period of time. The council will not approve a tax credit if the property transferred is to be sold or otherwise transferred again. However, mere retention of authority to dispose of or transfer property does not preclude the council from granting the credit if the donee has rules or policies to ensure that the property may only be transferred to a similar entity or affiliated organization for a similar purpose or sold in a reasonable manner with the proceeds pledged to the same purpose as the original gift. The property transferred should have real significance to the public and should be permanently used for the public's benefit. Personal property transferred should have significant historical or cultural value or be transferred and used in association with any real property transferred for which the council will approve the tax credit.

361—3.4(450) Political subdivisions. A political subdivision of the state of Iowa is a geographic or territorial portion of the state in which local governmental functions are performed. An agency or instrumentality of a political subdivision is part of the political subdivision. 1976 Op. Att'y Gen. 823.

361—3.5(450) Eligible taxes. The tax credit provisions in Iowa Code section 450.6 are applicable to the Iowa inheritance tax imposed by Iowa Code chapter 450. The taxes imposed by Iowa Code chapter 450A (generation skipping tax) and by Iowa Code chapter 451 (Iowa estate tax) will not be eligible for the tax credit for property transfers.

361—3.6(450) Partial payment. If the value of the property to be transferred is less than the inheritance tax liability of the beneficiary, heir, surviving joint tenant or other transferee who proposes such transfer and if the council approves the transfer, the remaining portion of the liability shall be paid to the department of revenue before the tax credit will be granted.

361—3.7(450) Timeliness of application. An application for approval of a proposed transfer shall be filed with the council within eight months of the death of the decedent, unless, for good cause, the council extends the period for filing such application. In no case will such extension be granted beyond the due date for the filing of the inheritance tax return and due date for payment of the tax or, if applicable, an extended date obtained pursuant to 701—subrule 900.2(9).

361—3.8(450) Notice of donee agencies. Any state agency which is the transferee of the property in question will receive notice of any pending application on the agenda of the executive council.

361—3.9(450) Scope of rules. These rules do not foreclose any transfers of property of any kind to the state or its political subdivisions. These rules are only concerned with whether such transfers will qualify for the tax credit authorized by Iowa Code section 450.6. The council's intent is to demonstrate that its discretion to approve the tax credit will not be broadly exercised.

361—3.10(450) Forms. The application to pay inheritance tax by a transfer of property and the certifications necessary under these rules is made on forms available from the department of revenue.

361—3.11(88GA,SF619) Sunset. This chapter shall cease to be operative on January 1, 2026.
These rules are intended to implement Iowa Code sections 17A.3 and 450.6.

ITEM 2. Rescind and reserve **361—Chapter 11.**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 361—Chapters 4 and 12
“Disbursement of Money from Civil Reparations Trust Fund”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 7D, and 668A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 668A

Public Hearing

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

November 27, 2023
12:15 p.m.

Room G9, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Executive Council no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nate Ristow
Governor’s Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Purpose and Summary

This proposed rulemaking explains the process for applying for grants from the Civil Reparations Trust Fund and the criteria the Executive Council will use to consider disbursement for the purposes of indigent civil litigation programs or insurance assistance programs.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Entities that provide indigent civil litigation or insurance assistance will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Indigent persons and Medicare-eligible individuals will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There are minimal costs to complete the application form. The last application to the Fund was in 2016, though Iowa Legal Aid recently requested the application form.
 - Qualitative description of impact:
There is time and effort involved to complete the application form.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

Costs are minimal since there have been no disbursements from the Fund over the last three fiscal years and no one has filed a motion to reconsider.

- Anticipated effect on state revenues:

The rulemaking will not have an impact of state revenues. The Fund balance is currently \$1,014,926. The funds are available for certain statutory purposes, and these rules do not change the availability of the funds for those purposes.

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

The costs are minimal, but the funds could better serve their intended purpose if they were directed to providers of these services directly or through other state agencies that currently support the intended purposes, without application to the Executive Council. However, that would require a statutory change, so the minimal costs imposed by this rule are reasonable to achieve the benefits.

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

Under the current statutory scheme, the costs imposed by the rule are minimal.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

The alternative discussed above is not available via rulemaking and would entail a statutory change.

Small Business Impact

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

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

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

There is no significant impact on small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 361—Chapter 4:

CHAPTER 4 DISBURSEMENT OF MONEY FROM CIVIL REPARATIONS TRUST FUND

361—4.1(68A) Notice of funds. The executive council provides notice of availability of money in the civil reparations trust fund in the following ways:

4.1(1) *Iowa Administrative Bulletin.* The executive council publishes notice of the balance in the fund in the Iowa Administrative Bulletin semiannually in January and July of each year and within 30 days of the deposit of any amount into the fund exceeding \$10,000. If the deposit of an amount exceeding \$10,000 would cause notice within 30 days of the deposit to be published in January or July, no additional publication is necessary.

4.1(2) *First-class mail.* The executive council maintains a mailing list of those persons who wish to receive notice of the balance in the fund. Notice is sent semiannually in January and July of each year and within 30 days of the deposit of any amount into the fund exceeding \$10,000 by first-class mail to all persons on the mailing list. If the deposit of an amount exceeding \$10,000 would cause notice within 30 days of the deposit to be mailed in January or July, no additional mailing is necessary. Any person may be added to the mailing list on request.

In the event that there is no money in the fund in January or July, no notice will be published or mailed.

361—4.2(668A) Applications. The executive council will accept applications for money from the fund for a period of 30 days after notice has been published in the Iowa Administrative Bulletin or sent by first-class mail. Applications will not be accepted in advance of this time period.

Application forms are available from and filed with the office of the state treasurer.

An application is timely if it is postmarked on the thirtieth day after the date of publication in the Iowa Administrative Bulletin or on the thirtieth day after the date affixed to the notice sent by first-class mail, whichever is later. The executive council may accept applications submitted after this deadline only for good cause upon motion in writing.

361—4.3(668A) Criteria. In determining whether to grant an application for money from the fund, the executive council considers the following factors:

1. The purpose for which the money will be utilized;
2. The number of people who will be served by the money;
3. The availability to the applicant of alternative sources of money;
4. The degree to which the applicant legally used the money under any prior applications.

361—4.4(668A) Disposition of applications. The executive council determines the disposition of all pending applications and notifies all applicants of the decision by first-class mail. Notice of disposition is sent to all applicants on the same date.

361—4.5(668A) Motion for reconsideration. Any applicant who is aggrieved or adversely affected by the disposition of the applicant's application may, within 15 days of the date affixed to the notice of disposition, file a motion for reconsideration in the office of the state treasurer. The motion is deemed filed when received and date-stamped by the treasurer.

361—4.6(668A) Grounds. The motion for reconsideration has to delineate the specific grounds for reconsideration. An applicant may request a contested case hearing; however, any request for a contested case hearing specifically delineates the facts in dispute to be contested and determined at the hearing.

361—4.7(668A) Procedure. The executive council rules on any pending motion for reconsideration, including a request for a contested case hearing. In the event that a request for a contested case hearing is granted, the proceeding is conducted as provided in X.5 of the Uniform Rules on Agency Procedure related to contested cases, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website. The burden of proof by a preponderance of the evidence rests with the requester to establish grounds for reconsideration. The office of the attorney general will defend the decision of the executive council.

361—4.8(668A) Disbursement of money. No money will be disbursed from the fund after disposition of all applications until the time period for filing a motion for reconsideration has expired. After the

time period for filing a motion for reconsideration has expired but while a motion for reconsideration by any applicant is pending, the executive council in its discretion may disburse money from the fund to applicants who have not filed a motion for reconsideration. Money may be disbursed to applicants while a motion for reconsideration is pending only to the extent that resolution of any pending motion could not affect the disbursement of money to other applicants.

361—4.9(668A) Administrative costs. The costs of administering this fund, including any costs associated with the conduct of any contested case proceeding challenging the disbursement of money from the fund and costs for postage and copying, are billed to the fund after approval by the executive council.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 7D and 668A.

ITEM 2. Rescind and reserve **361—Chapter 12.**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapters 1, 3, 4, 5, 7, 9, and 16
“Uniform Rules on Agency Procedure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 217.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Each legacy department merged into HHS as part of the government reorganization and maintained its own set of Uniform Rules on Agency Procedure. HHS proposes to keep one set of uniform rules for the combined department of HHS. Existing uniform rule chapters include:

- 17—Chapters 2, 11, 13, 17, 18, and 19
- 421—Chapters 1, 2, 3, 4, 5, 6, and 7
- 441—Chapters 1, 3, 4, 5, 7, 9, and 16
- 489—Chapter 5
- 641—Chapters 170, 171, 172, 173, 174, 175, and 178
- 817—Chapters 1, 2, 3, 5, and 6

These chapters comprise the HHS Uniform Rules on Agency Procedure. HHS seeks to rescind all uniform rules that exist for a department or program merged into HHS as part of the government reorganization and to repromulgate one set of uniform rules for HHS under agency number 441.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
None were identified.
 - Classes of persons that will benefit from the proposed rulemaking:
All Iowans benefit from Uniform Rules on Agency Procedure being applied consistently across HHS.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Not applicable.

- Qualitative description of impact:

HHS is proposing to eliminate Uniform Rules on Agency Procedure that are redundant or duplicative of existing rules adopted by HHS to reduce confusion and establish a single set of uniform rules for the newly reorganized department.

3. Costs to the State:

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

These administrative procedures are a part of HHS standard business operations and absorbed in the general cost of administering the work of HHS.

- Anticipated effect on state revenues:

Not applicable.

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

By incorporating the Uniform Rules on Agency Procedure as HHS procedure, HHS ensures members of the public can interact with HHS in a manner that is consistent, efficient, and effective.

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

No less costly or intrusive methods exist.

6. Alternative methods considered by the agency:

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

Not applicable.

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

HHS is implementing the Uniform Rules on Agency Procedure prescribed on the Legislative Services Agency's website.

Small Business Impact

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

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

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

This rulemaking is not expected to have any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 1 and adopt the following **new** chapter in lieu thereof:

GENERAL DEPARTMENTAL PROCEDURES
TITLE I

CHAPTER 1
DEPARTMENT ORGANIZATION AND GENERAL DEFINITIONS

441—1.1(217) History and mission. The Iowa department of health and human services was established in 2022 pursuant to 2022 Iowa Acts, House File 2578, and fully codified pursuant to 2023 Iowa Acts, Senate File 514. The authority delegated to the department had previously been delegated to the departments of human services, public health, aging, and human rights; the Iowa commission on volunteer service; the child advocacy board and the department of inspections and appeals. In 2023, the general assembly combined these agencies and programs to create the department of health and human services. The department’s mission is published on the department’s website.

441—1.2(217) Definitions. For the purposes of the department’s rules, unless otherwise defined:

“*Council*” means the health and human services council.

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

“*Director*” means the director of health and human services.

“*Electronic signature*” means a confidential personalized digital key, code, or number that is used for secure electronic data transmission and that identifies and authenticates the signatory.

441—1.3(217) Department structure.

1.3(1) General. The department’s organizational structure consists of the council, the director and such divisions as the director may from time to time create.

1.3(2) Director. The department director is appointed pursuant to the requirements in Iowa Code section 217.5.

1.3(3) Delegation of director authority. The director may designate employee(s) to administer the department in the director’s absence. The director may also delegate the director’s authority to administer the department to other employees as determined necessary for efficient and effective department operations. Delegations of the director’s authority will be documented by the department.

1.3(4) Divisions. The director may from time to time reorganize the department into administrative divisions to most efficiently and effectively carry out the department’s responsibilities. Reorganization may include creating new division, eliminating existing divisions, or combining divisions as the director deems necessary.

441—1.4(217) Information. The general public may obtain information about the department by contacting the department at its offices located at 321 E. 12th Street, Des Moines, Iowa 50319, telephone 515.281.5452, or through the department’s website.

441—1.5(217) Health and human services council. The council is established in Iowa Code section 217.2 and its duties are in Iowa Code section 217.3. Meetings of the council and any ad hoc committee it may establish are conducted in accordance with the provisions of Iowa Code chapter 21.

441—1.6(217) State council on developmental disabilities. The state developmental disabilities council and its duties are established in 42 U.S.C. §15025.

1.6(1) Designated state agency. The department serves as the designated state agency.

1.6(2) Membership. The council consists of up to 26 members appointed by the governor. Members serve three-year terms. Appointments are staggered so at least one-third of the members are appointed each year. The nonattendance provisions of Iowa Code section 69.15 apply to the council’s members.

1.6(3) Meetings. Meetings of the council are conducted in accordance with the provisions of Iowa Code chapter 21.

1.6(4) Council information. The general public may obtain information about the council at its offices located at 700 2nd Avenue, Suite 101, Des Moines, Iowa, 50309; telephone 800. 452.1936; or the website iowaddcouncil.org.

ITEM 2. Rescind 441—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
DEPARTMENT PROCEDURE FOR RULEMAKING

The department adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to agency procedure for rulemaking, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly's website.

441—3.3(17A) Public rulemaking docket.

3.3(2) Anticipated rulemaking. In lieu of the words “(commission, board, council, director)” insert “director”.

441—3.4(17A) Notice of proposed rulemaking.

3.4(3) Notices mailed. In lieu of the words “(specify time period)” insert “one calendar year”.

441—3.5(17A) Public participation.

3.5(1) Written comments. In lieu of the words “(identify office and address)” insert “Compliance Division, Iowa Department of Health and Human Services, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.

3.5(5) Accessibility. In lieu of the words “(designate office and telephone number)” insert “Compliance Division of the Department, 515.281.7689”.

441—3.6(17A) Regulatory flexibility analysis.

3.6(3) Mailing list. In lieu of the words “(designate office)” insert “Compliance Division, Iowa Department of Health and Human Services, Lucas State Office Building, Des Moines, Iowa 50319”.

441—3.11(17A) Concise statement of reasons.

3.11(1) General. In lieu of the words “(specify the office and address)” insert “Compliance Division, Iowa Department of Health and Human Services, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.

441—3.13(17A) Agency rulemaking record.

3.13(2) Contents. Amend paragraph “c” by inserting “director” in lieu of “(agency head)”.

ITEM 3. Rescind 441—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
PETITIONS FOR RULEMAKING

The department adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly's website.

441—4.1(17A) Petition for rulemaking. In lieu of the words “designate office” insert “Compliance Division, Iowa Department of Health and Human Services, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319” and in lieu of the words “AGENCY NAME,” the heading on the petition should read “THE DEPARTMENT OF HEALTH AND HUMAN SERVICES”.

441—4.3(17A) Inquiries. Inquiries concerning the status of a petition may be made to the compliance division at the department’s address or at compliancerules@idph.iowa.gov.

ITEM 4. Rescind 441—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
DECLARATORY ORDERS

The department adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly’s website. Every instance that lists “designate agency” shall be read as the department of health and human services.

441—5.1(17A) Petition for declaratory order. In lieu of the words “designate office” insert “compliance division, at the department’s address”.

441—5.2(17A) Notice of petition. The department shall have 15 days after receipt to give notice.

441—5.3(17A) Intervention.

5.3(1) Nondiscretionary intervention. Fifteen days shall be the time frame for a person to file for an intervention.

5.3(3) Filing and form of petition for intervention. In lieu of the words “designate office” insert “compliance division, at the department’s address”.

441—5.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the compliance division at the department’s address or at compliancerules@idph.iowa.gov.

441—5.6(17A) Service and filing of petitions and other papers.

5.6(2) Filing—when required. In lieu of the words “specific office and address” insert “compliance division, at the department’s address or compliancerules@idph.iowa.gov” and in lieu of “agency name” insert “department”.

5.6(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 X.12(17A) of the contested cases segment of the uniform rules on agency procedure published on the Iowa general assembly’s website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

441—5.8(17A) Action on petition.

5.8(1) Time frames for action. Within 30 days after receipt of a petition for a declaratory order, the department shall take action on the petition as required by Iowa Code section 17A.9(5).

5.8(2) Date of issuance of order. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

ITEM 5. Rescind 441—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
APPEALS AND HEARINGS

PREAMBLE

The provisions of this chapter shall apply to contested case proceedings conducted by or on behalf of the department pursuant to Iowa Code chapter 17A. The definitions in rule 441—7.1(17A) apply to the rules in both Division I and Division II.

441—7.1(17A) Definitions.

“Adverse benefit determination” means any adverse action taken as to any individual’s benefits pursuant to an assistance program administered by the department or on the department’s behalf, excluding determinations related to requests for exceptions to policy.

“Appeals section” means the section of the department charged with administering the department’s appeals.

“Appellant” means a person, including an authorized representative acting on the person’s behalf, seeking to appeal some action pursuant to this chapter.

“Assistance program” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, the Supplemental Nutrition Assistance Program (SNAP), Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (hawki) program, foster care, adoption, and aftercare services.

“Authorized representative” means a person lawfully designated by an individual to act on the individual’s behalf or who has legal authority to act on behalf of the individual.

“Contested case” refers to an evidentiary hearing mandated by state or federal constitutional or statutory authority whereupon a presiding officer makes a determination pertaining to the relative rights and obligations of parties to an appeal under this chapter.

“DIAL” means the department of inspections, appeals, and licensing.

“Enrollee” means any applicant to or recipient of benefits or services pursuant to an assistance program.

“Good cause,” for purposes of this rule, shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

“In-person hearing” means an appeal hearing where the administrative law judge and appellant are physically present in the same location but witnesses are not required to be physically present.

“Intentional program violation” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing any act that is a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state law relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of SNAP benefits or an electronic benefit transfer (EBT) card. An intentional program violation is determined through a SNAP administrative disqualification hearing, a court conviction, or when an individual signs and returns Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, which may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“Managed care organization” or *“MCO”* has the meaning assigned to it in rule 441—73.1(249A) and includes prepaid ambulatory health plans.

“Medicaid” means Iowa’s medical assistance program administered under Iowa Code chapter 249A.

“Party-in-interest” refers to the party, including enrollees, whose rights or obligations are the subject of a contested case hearing under this chapter. Parties-in-interest may or may not be the appellant.

“Presiding officer” means an administrative law judge from DIAL or the director of the department or the members of a multimember board or commission.

“Self-represented” means representing oneself without an attorney.

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIAL rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIAL rules, the program-specific federal or state law shall control.

DIVISION I
GENERAL APPEALS PROCESS

441—7.3(17A) When a contested case hearing will be granted.

7.3(1) Requirements. A person shall be granted a contested case hearing if the party-in-interest fulfills all of the following requirements:

- a. The party-in-interest is entitled to a contested case hearing;
- b. The party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing; and
- c. The party-in-interest meets all of the other requirements contained in these rules.

7.3(2) Refusal to process an application. Unless otherwise provided by law, when an appellant seeks a contested case hearing after the department refuses to process an application for benefits or services, a hearing shall be granted.

7.3(3) When a hearing is not granted. A hearing shall not be granted when one of the following issues is appealed:

- a. Patient treatment interventions outlined in the patient handbook of the civil commitment unit for sexual offenders.
- b. Children have been removed from or placed in a specific foster care setting or preadoptive placement.
- c. A final decision from a previous hearing with a presiding officer has been implemented.

7.3(4) Contractual rights not subject to contested case hearing. Unless otherwise provided by law, when an appellant seeks a contested case hearing of an issue predicated upon or governed by the terms of a contract between appellant and another party, including the department, a contested case hearing shall not be provided.

7.3(5) Change in law. A contested case hearing shall not be granted when the sole issue raised is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries to an assistance program.

7.3(6) Competitive procurement bid appeals. Competitive procurement bid appeals shall be adjudicated pursuant to Division II of this chapter.

441—7.4(17A) Initiating an appeal.

7.4(1) Exhaustion of remedies. An appellant shall only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the party-in-interest. An appellant should refer to program-specific provisions for the appropriate procedures applicable to specific programs.

7.4(2) Medicaid managed care enrollees exhaustion of remedies.

a. A Medicaid managed care enrollee shall be granted a contested case hearing only if the enrollee has either received a decision from a managed care organization in the time and manner required by rule 441—73.12(249A) or has been deemed to have exhausted the managed care organization appeals under paragraph 7.4(2)“b.”

b. If a Medicaid enrollee’s managed care organization fails to provide a decision in the time and manner required by rule 441—73.12(249A), the enrollee shall be deemed to have exhausted the managed care organization’s appeals process and may initiate a contested case hearing.

7.4(3) Time to appeal. For a contested case hearing to be granted, the following appeal timelines must be met:

a. *Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, family planning program and autism support program.* On or before the ninetieth day following the date of notice of an adverse benefit determination.

b. *Managed care organization medical services coverage.* On or before the one hundred twentieth day following the date of exhaustion, actual or deemed, of the managed care organization appeal process outlined in rule 441—73.12(249A).

c. *Tax offsets.* Except for counties appealing an offset under 441—Chapter 14, for appeals of state or federal tax offsets, on or before the fifteenth day following the date of notice of the action. For counties

appealing a debtor offset under 441—Chapter 14, on or before the thirtieth day following the date of notice of the offset.

d. Iowa individual disaster assistance program. On or before the ninetieth day following the date of the department's reconsideration decision, pursuant to 441—subrule 58.7(1).

e. Iowa disaster case management program. On or before the ninetieth day following the date of the department's reconsideration decision, pursuant to 441—subrule 58.7(1).

f. Dependent adult abuse. Within six months of the date of notice of the action as provided in Iowa Code section 235B.10.

g. Child abuse. For appeals regarding child abuse, the person alleged responsible for the abuse must appeal on or before the ninetieth day following the date of notice of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the appeal on or before the tenth day following the date of notice of the right to intervene.

h. Assistance program overpayments. For appeals pertaining to the family investment program, refugee cash assistance, PROMISE JOBS, child care assistance, medical assistance, healthy and well kids in Iowa (hawki), family planning program or Supplemental Nutrition Assistance Program (SNAP) overpayments, the party-in-interest's right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment.

i. All other appeals. For all other appeals, and unless federal or state law provides otherwise elsewhere, the appellant must appeal on or before the thirtieth day following the date of notice of the action being appealed. If such an appeal is made more than 30 days, but less than 90 days, of the date of notice, the director or director's designee may, at the director's or designee's sole discretion, allow a contested case hearing if the delay was for good cause, substantiated by the appellant.

7.4(4) Written and oral notification. The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status.

a. Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

(1) The right to request a hearing.

(2) The procedure for requesting a hearing.

(3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

b. Written notification shall be given on the application form and all notices of decision.

441—7.5(17A) How to request an appeal.

7.5(1) Ways to request a hearing. An appellant may request a contested case hearing:

a. Via the department's website,

b. By telephone, except as specified in subrule 7.5(4),

c. By mail,

d. In person, except as specified in subrule 7.5(4), or

e. Through other commonly available electronic means (such as email or facsimile).

7.5(2) Hearing request. The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal. The department may deny if there is not sufficient information to determine the action being appealed.

7.5(3) Filing date. The date of filing for appeal requests sent by regular mail shall be the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the agency. The date of filing for appeal requests sent electronically shall be determined by the date on which the electronic submission was completed.

7.5(4) Appeals that must be filed in writing. Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, the Iowa individual disaster assistance program, the Iowa disaster case management program, sex offender risk assessment, record check evaluation,

child care registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

7.5(5) Department's responsibilities. Unless the appeal is voluntarily withdrawn, the department shall:

a. Within one working day of receipt of an appeal request, forward the request for appeal and envelope (if any) and a copy of the notice to the appeals section.

b. Within ten days of the receipt of the appeal, forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section.

c. Copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal are to be provided to the appellant at the same time as the materials are sent to the appeals section or the presiding officer.

441—7.6(17A) Prehearing procedures.

7.6(1) Acknowledgment of appeal. When the appeals section receives a request for appeal, it shall send acknowledgment of the receipt of the appeal to the parties to the appeal. For appeals regarding child abuse, all subjects other than the person alleged responsible (party-in-interest) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

7.6(2) Acceptance or denial of appeal. The appeals section will determine with reasonable promptness whether the party-in-interest is entitled to a contested case hearing. If a request is accepted, the appeals section will certify the appeal to DIAL and designate the issues on appeal. If a request for a contested case hearing is denied, the appeals section will provide written notice of and the reasons for the denial. On or before the thirtieth day following the denial, the individual requesting the appeal may provide additional information related to the individual's asserted right to a contested case hearing and request reconsideration of the denial.

7.6(3) Designation of issues for appeal.

a. Initial designation. After determining that the party-in-interest is entitled to a contested case hearing, the appeals section will designate the issues to be decided at the contested case hearing. The issues designated shall be certified to DIAL and be identified in the notice of hearing issued pursuant to subrule 7.6(5).

b. Additional designation of issues. If any party believes additional issues should be designated, the party shall identify the additional issues within the following timelines. The presiding officer shall determine whether all issues have properly been preserved.

(1) Child abuse and dependent adult abuse registry appeals. For child abuse and dependent adult abuse registry appeals, the party shall identify additional issues at least 30 days before the date of hearing.

(2) Appeals set on or before the tenth day following the notice of hearing. If the hearing is on or before the tenth day following the date of the notice of hearing, the party shall identify any additional issues at the hearing.

(3) All other appeals. For all other appeals not identified in this paragraph, the party shall identify the additional issues on or before the tenth day following the date of the notice of hearing.

7.6(4) Group hearings regarding medical assistance. The appeals section may respond to a series of related, individual requests for hearings regarding medical assistance by consolidating individual hearings into a single group hearing where the sole issue is based on state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

7.6(5) Notice of hearing.

a. Issuance of hearing notice. Except as provided in paragraph 7.6(5) "b," DIAL shall send notice to the parties of the appeal at least ten calendar days in advance of the hearing setting forth the date, time, method, and place of the hearing; that evidence may be presented orally or documented to establish pertinent facts; that the parties may bring and question witnesses and refute testimony; and that the parties may be represented by others, including an attorney, at the parties' own cost and as subject to state and federal law. Notice shall be mailed by first-class mail, postage prepaid, and addressed to the appellant at the appellant's last-known address.

b. Intentional program violation hearing notices. DIAL shall send notices of hearing regarding alleged intentional program violations at least 30 days in advance of the hearing date. The notices under this paragraph shall otherwise comply with the requirements of paragraph 7.6(5) “a.”

7.6(6) Appellant’s right to department’s case file. Prior to and during the contested case hearing, the department must provide enrollees or their authorized representative with the opportunity to examine the content of the appellant’s case file, if any, and all documents and records to be used by the department at the hearing.

7.6(7) Informal conference. The purpose of an informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

a. When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant’s representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

b. An informal conference need not be requested for the appellant to examine the contents of the case record.

441—7.7(17A) Timelines for contested case hearings.

7.7(1) Medical assistance. In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f) as amended to December 8, 2021.

7.7(2) Community spouse resource allowance. In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

7.7(3) Sex offender risk assessment. In cases involving an appeal of a sex offender risk assessment, the hearing or administrative review shall be held within 30 days of the date of the appeal request.

441—7.8(17A) Contested case hearing procedures.

7.8(1) Method. Contested case hearings may be conducted via telephone or videoconference. Upon request of a party to the appeal or order of the presiding officer, the contested case hearing shall be conducted in person.

7.8(2) Evidence.

a. The parties to a contested case hearing may:

- (1) Bring witnesses,
- (2) Submit competent evidence to establish all pertinent facts and circumstances,
- (3) Present arguments without undue interference,
- (4) Question or refute any testimony or evidence, including through cross-examination, and
- (5) Respond to evidence and arguments on all issues.

b. Evidence shall be received or excluded as provided in Iowa Code section 17A.14.

7.8(3) Right to counsel. Parties to an appeal shall be permitted to be represented by counsel at the parties’ own expense.

7.8(4) Self-represented appellants. The presiding officer shall, at the officer’s discretion, provide reasonable assistance to self-represented appellants. The presiding officer must, however, ensure that such assistance does not impact the independence and fairness of the contested case hearing process.

7.8(5) Closed to public. Contested case hearings are closed to the public, and unless otherwise provided by state or federal law, only the parties, their representatives, permissible intervenors, and witnesses may be present for a contested case hearing in the absence of mutual agreement of the parties.

7.8(6) Administration of appeals. Except as otherwise provided in this chapter or other applicable federal or state law, discretion in the conduct and administration of appeals is vested in the contested case hearing presiding officer.

7.8(7) *Contested cases with no factual dispute.* If the parties in a contested case agree that there is no dispute of material fact, the parties may present all admissible evidence either by stipulation, or as otherwise agreed, in lieu of an evidentiary hearing. If an agreement is reached, the parties shall jointly submit a schedule for submission of the record, briefs and oral arguments to the presiding officer for approval. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

441—7.9(17A) Miscellaneous rules governing contested case hearings.

7.9(1) *Ex parte communication.* Ex parte communications between the presiding officer and person or party in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply.

7.9(2) *Default.* If a party fails to appear at a scheduled hearing or prehearing conference without good cause as determined by the presiding officer, the party's appeals may be denied and dismissed or may be heard and ruled upon, consistent with Iowa Code section 17A.12(3). Defaulting parties may file a timely motion to vacate, which shall be granted if the presiding officer determines good cause has been shown.

7.9(3) *Withdrawal.* An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule 7.5(1), except for programs listed in subrule 7.5(4). For programs listed in subrule 7.5(4), a written request may be submitted via the department's website, by mail, in person, or through other commonly available electronic means (such as email or facsimile). Unless otherwise provided, a withdrawal shall be with prejudice.

7.9(4) *Medical assessment.* For Medicaid enrollees engaged in an appeal involving medical issues, the department may request, at the department's own expense, that the appellant submit to an appropriate medical assessment. The presiding officer shall order such assessment upon sufficient showing of necessity.

7.9(5) *Standard of review.* In child abuse appeals, the criteria and level of deference by which the presiding officer shall render a decision is based on a preponderance of evidence.

7.9(6) *Interpreters.* The department shall provide translation and interpretation services to appellants, if requested. In all cases when an appellant is illiterate or semiliterate, the presiding officer shall advise the appellant of the appellant's rights to the satisfaction of the appellant's understanding.

7.9(7) *Persons living with disabilities.* Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act (as amended to December 31, 2023) and Section 504 of the Rehabilitation Act (as amended, effective October 1, 2016).

441—7.10(17A) Proposed decision.

7.10(1) *Contents.* The presiding officer shall issue a written proposed decision to all parties clearly identifying the issues on appeal, holding, findings of fact, conclusions of law, and order. The findings of fact shall cite and be based exclusively on the record as defined by Iowa Code section 17A.12(6). The conclusions of law shall be limited to the contested issues of fact, policy or law and shall identify the specific provisions of law that support the ultimate conclusion.

7.10(2) *Access to record.* After receiving the proposed decision, appellants shall be given reasonable access to the record at a convenient place and time.

441—7.11(17A) Director's review.

7.11(1) *Time.* Parties, including the department, may appeal the proposed decision to the director.

a. A request for director's review shall be in writing and postmarked or received within 14 calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1)"*b.*" A request for director's review may be accompanied by a brief written summary of the arguments in favor of director's review.

b. A managed care organization appealing a proposed decision reversing an adverse benefit determination shall request director's review within 72 hours from the date it received notice of the proposed decision.

7.11(2) *Grant or denial of review.* The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director's own motion at any time on or before the thirtieth day following the issuance of the proposed decision.

When the department grants a request for director's review, the appeals section shall notify the parties and enclose a copy of the request. All other parties shall have 14 calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

7.11(3) *Cross-appeal.* When a party requests director's review in accordance with subrule 7.11(1), the remaining parties shall have 14 calendar days from that date to submit cross-requests for director's review. The party originally seeking director's review shall have 14 calendar days from the date of the cross-request for director's review to submit further written arguments or objections for consideration upon review.

7.11(4) *Limited record.* Director's review shall be limited to the issues and record before the contested case hearing presiding officer.

7.11(5) *Oral arguments.* Upon specific request, the director may, at the director's discretion, permit parties to present oral arguments with the parties' requests for director's review.

441—7.12(17A) Final decisions.

7.12(1) *No appeal or denial of director review.* If there is no timely appeal from or review of the proposed decision, the presiding officer's proposed decision becomes the final decision of the agency.

7.12(2) *Timelines.*

a. The department or director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the department or director will issue a final decision on or before the ninetieth day from the date the department receives an appeal request.

b. Except as otherwise provided by state or federal law, the time frames for a final decision provided under this rule may be tolled when:

- (1) The appellant requests a delay;
- (2) The appellant fails to take a required action; or
- (3) There is an administrative or other emergency beyond the department's control.

c. DIAL shall document in the record the reasons for any delay and the requesting party.

7.12(3) *Written notice of final decision.* The parties to the appeal shall be provided written notice of the department's final decision. The department shall also notify the appellant of the appellant's right to seek judicial review, where applicable.

441—7.13(17A) Expedited review.

7.13(1) *Expedited review criteria.* Appellants to a medical assistance appeal may, at any time, file with the department a request for expedited review of the appeal. Expedited review shall be granted when the department determines, or a provider acting on behalf or in support of an appellant indicates, that taking the time for a standard resolution could seriously jeopardize the party-in-interest's life, physical or mental health, or ability to attain, maintain, or regain maximum function.

7.13(2) *Managed care expedited proceedings.*

a. If the appellant is granted an expedited review pursuant to subrule 7.13(2), all subsequent proceedings shall also be expedited without an additional request if the appeal request indicates that the managed care organization appeal was expedited and provides the basis for expedited relief.

b. When review is expedited pursuant to paragraph 7.13(2) "a," the presiding officer shall issue a proposed decision as expeditiously as the enrollee's health condition requires, but no later than three working days after the department receives from the managed care organization the case file and information for any appeal of a denial of a service that, as indicated by the managed care organization:

(1) Meets the criteria for expedited resolution but was not resolved within the time frame for expedited resolution; or

(2) Was resolved within the time frame for expedited resolution but reached a decision wholly or partially adverse to the enrollee.

7.13(3) *Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review expedited proceedings.* For expedited appeals related to Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review requirements, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than seven working days after the department receives a request for expedited fair hearing.

7.13(4) *Medicaid-covered benefits or services expedited proceedings.* For expedited appeals related to Medicaid-covered benefits or services, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than provided in paragraph 7.13(2) “b.”

7.13(5) *Final decision for expedited proceeding.* The department shall issue its final decision in accordance with this rule, except as provided by subrule 7.12(2).

7.13(6) *Notification if expedited relief is granted or denied.* The department shall notify the appellant as expeditiously as possible whether the request for expedited relief is granted or denied. Such notice must be provided orally or through electronic means to the extent consistent with federal and state law. If oral notice is provided, the department shall follow up with written notice, which may be through electronic means to the extent consistent with federal and state law.

441—7.14(17A) Effect.

7.14(1) If the contested case hearing presiding officer’s proposed decision is favorable to an enrollee in a Medicaid appeal, the department must promptly make corrective payments retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility. If the presiding officer reverses a decision of a managed care organization to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the enrollee’s health condition requires, but no later than 72 hours from the date the managed care organization receives notice reversing the determination.

7.14(2) Unless there is contravening federal or state law, all final decisions shall be put into effect within seven days of the issuance of the final decision.

441—7.15(17A) Calculating time. In computing any time period specified in this chapter, the period:

1. Excludes the day of the event that triggers the period;
2. Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and
3. Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

441—7.16(17A) Authorized representatives.

7.16(1) *Regulations.* The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law.

7.16(2) *Designation of authority.* Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, shall be sufficient for a delegate to serve as authorized representative under this chapter. A person who is not designated a legally recognized delegation of authority but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative’s representation.

7.16(3) *Written designation.* For persons other than attorneys seeking to act as authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative's written designation of authority pursuant to subrule 7.16(2) shall be Form 470-5526, Authorized Representative for Managed Care Appeals. This form is required for all managed care appeals, including those handled through the expedited appeals process. Failure to provide the form or legal documentation may result in denial of the appeal request.

7.16(4) *Appearance by attorney.* Legal counsel appearing on behalf of any person in a proceeding under this chapter shall enter an appropriate written appearance.

441—7.17(17A) Continuation and reinstatement of benefits.

7.17(1) *Programs for which no federal or state law applies.* For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be suspended, reduced, restricted, or discontinued, nor shall a license, registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

- a. An appeal is filed before the effective date of the intended action; or
- b. The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services. The date on which the notice is received is considered to be five days after the date on the notice, unless the appellant shows the notice was not received within the five-day period.

7.17(2) *Sole issue is state or federal law or policy.* Benefits or services continued pursuant to subrule 7.17(1) may be suspended, reduced, restricted, or discontinued if the presiding officer determines at the contested case hearing that the sole issue is one of state or federal law or policy and the department has notified the enrollee in writing that services are to be suspended, reduced, restricted, or discontinued pending the proposed decision.

7.17(3) *Recoup cost of services or benefits.* The department or managed care organization may recoup the cost of benefits or services provided pursuant to this chapter if the adverse action appealed from is affirmed, consistent with state and federal law.

441—7.18(17A) Emergency adjudicative proceedings.

7.18(1) *Necessary emergency action.* When and to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with state and federal law, a contested case hearing presiding officer may issue a written order 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. In determining the necessity of such an action, the presiding officer shall consider factors including, but not limited to, the following:

- a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;
- b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;
- c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated is necessary to avoid the immediate danger.

7.18(2) *Issuance of order.* An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. The agency shall provide written notice that best ensures prompt, reliable delivery. Such order shall be immediately delivered to the persons required to comply with the order.

7.18(3) *Completion of proceedings.* Upon issuance of an order under this rule, the department shall proceed as quickly as reasonably practicable to complete any proceedings that would be required if the matter did not involve an immediate danger. An order issued under this rule shall include notice

of the date on which proceedings under this chapter are to be completed. After issuance of an order under this rule, continuance of further proceedings under this chapter shall only be granted in compelling circumstances upon application in writing. Before issuing an emergency adjudicative order, the presiding officer shall consider factors including, but not limited to, the following:

- a.* Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;
- b.* Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;
- c.* Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;
- d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e.* Whether the specific action contemplated is necessary to avoid the immediate danger.

441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings. The department acts on alleged intentional program violations either through an administrative disqualification hearing or referral to a court of appropriate jurisdiction. An individual accused of an intentional program violation may waive the individual's right to an administrative disqualification hearing in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f) as amended to December 8, 2021.

7.19(1) When a case is referred for an administrative disqualification hearing, the appeals section shall mail written notification to the individual that the individual can waive the right to an administrative disqualification hearing by signing and returning Waiver of Right to an Administrative Disqualification Hearing.

7.19(2) By signing Waiver of Right to an Administrative Disqualification Hearing, the individual:

- a.* Waives the right to an administrative disqualification hearing;
- b.* Consents to the SNAP disqualification period designated Waiver of Right to an Administrative Disqualification Hearing, and a reduction of benefits for the period of disqualification; and
- c.* Acknowledges that remaining household members, if any, may be held responsible for repayment of the resulting claim.

7.19(3) An administrative disqualification hearing shall be scheduled if the individual does not sign and mail or fax Waiver of Right to an Administrative Disqualification Hearing, to the appeals section within ten days of receipt of the written notification stating the individual can waive the right to an administrative disqualification hearing. The date on which the written notification is received is considered to be five days after the date on the notification, unless the individual shows the notification was not received within the five-day period.

7.19(4) An individual who waives the right to an administrative disqualification hearing will be subject to the same penalties as an individual found to have committed an intentional program violation in an administrative disqualification hearing.

7.19(5) No further administrative appeal procedure exists after an individual waives the individual's right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty shall not be changed by a subsequent fair hearing decision.

441—7.20 to 7.40 Reserved.

DIVISION II
APPEALS BASED ON THE COMPETITIVE PROCUREMENT BID PROCESS

441—7.41(17A) Scope, bidder and applicability. The rules in Division II apply to appeals based on the department's competitive procurement bid process. A bidder is an entity that submits a proposal in response to a solicitation issued through the department's competitive procurement process.

441—7.42(17A) Requests for timely filing of an appeal. Any bidder that receives either a notice of disqualification or a notice of award, and has first exhausted the reconsideration process, is considered an aggrieved party and may file a written appeal with the department.

7.42(1) An aggrieved party in a competitive procurement must seek reconsideration of a disqualification or a notice of award prior to filing any appeal. The request for reconsideration must be received by the department within five calendar days of the date of either a disqualification notice or notice of award, exclusive of Saturdays, Sundays and legal state holidays. The department will expeditiously address the request for reconsideration and issue a decision on the reconsideration. If the party seeking reconsideration continues to be an aggrieved party following receipt of the decision on reconsideration, the aggrieved party may file an appeal within five calendar days of the date of the department's decision on reconsideration, exclusive of Saturdays, Sundays and legal state holidays.

7.42(2) The written appeal shall state the grounds upon which the appellant challenges the department's decision.

7.42(3) The day after the department's decision on reconsideration is issued is the first day of the period in which the appeal may be filed. The mailing address is: Department of Health and Human Services, Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Appeals may also be sent by email, or in-person delivery.

When an appeal is submitted through an electronic delivery method, such as electronic mail or facsimile, the appeal is filed on the date it is submitted. The electronic delivery method shall record the date and time the appeal request was submitted. If there is no date recorded by the electronic delivery method or the appeal was filed via in-person delivery, the date of filing is the date the appeal is stamped received by the agency. Receipt date of all appeals shall be documented by the office where the appeal is received.

When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

441—7.43(17A) Bidder appeals. The bidder appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of Division II. Division I of this chapter does not apply to competitive procurement bid appeals, unless otherwise noted.

7.43(1) *Hearing time frame.* The presiding officer shall hold a hearing on the bidder appeal within 60 days of the date the notice of appeal was received by the department.

7.43(2) *Registration.* Upon receipt of the notice of appeal, the department shall register the appeal.

7.43(3) *Acknowledgment.* Upon receipt of the notice of appeal, the department shall send a written acknowledgment of receipt of the appeal to the appellant, representative, or both.

7.43(4) *Granting a hearing.* The department shall determine whether an appellant may be granted a hearing and the issues to be discussed at the hearing in accordance with the applicable rules, statutes or federal regulations or request for proposal.

a. The appeals of those appellants who are granted a hearing shall be certified to the department of inspections, appeals, and licensing for the hearing to be conducted. The department shall indicate at the time of certification the issues to be discussed at the hearing.

b. Appeals of those appellants that are denied a hearing shall not be closed until a letter is sent to the appellant and the appellant's representative advising of the denial of the hearing and the basis upon which that denial is made. Any appellant that disagrees with a denial may present additional information relative to the reason for denial and request reconsideration by the department over the denial.

7.43(5) *Hearing scheduled.* For those records certified for hearing, the department of inspections, appeals, and licensing shall establish the date, time, method and place of the hearing, with due regard for the convenience of the appellant as set forth in the department of inspections, appeals, and licensing rules in 481—Chapter 10 unless otherwise designated by federal or state statute or regulation.

7.43(6) *Method of hearing.* The department of inspections, appeals, and licensing shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference

hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule 441—7.8(17A).

7.43(7) Reschedule requests. Requests made by the appellant or the department to set another date, time, method or place of hearing shall be made to the department of inspections, appeals, and licensing, except as otherwise noted. The granting of the requests will be at the discretion of the department of inspections, appeals, and licensing. All requests concerning the scheduling of a hearing shall be made to the department of inspections, appeals, and licensing directly.

7.43(8) Notification. For those appeals certified for hearing, the department of inspections, appeals, and licensing shall send a notice to the appellant at least ten calendar days in advance of the hearing date.

a. The notice shall comply with Iowa Code section 17A.12(2), and include a statement that opportunity shall be afforded to all parties to respond and present evidence on all issues involved and to be represented by counsel at their own expense.

b. A copy of this notice shall be made available to the department employee who took the action and to any other parties to the appeal.

441—7.44(17A) Procedures for bidder appeal.

7.44(1) Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

7.44(2) Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

7.44(3) Amendments to notice of appeal. The aggrieved bidder may amend the grounds upon which the bidder challenges the department's award no later than 15 days prior to the date set for the hearing.

7.44(4) If the hearing is not conducted in person, the parties must deliver all exhibits to the office of the presiding officer at least three days prior to the time the hearing is conducted.

7.44(5) The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to the appellant and representative by mail.

7.44(6) The record of the contested case shall include all materials specified in Iowa Code section 17A.12(6).

441—7.45(17A) Stay of agency action for bidder appeal.

7.45(1) When a stay may be requested.

a. Any party appealing the issuance of a notice of disqualification or notice of award may petition for stay of the decision pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

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

7.45(2) When a stay is granted. In determining whether to grant a stay, the director shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

7.45(3) Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in rule 441—7.11(17A).

441—7.47(17A) Other procedural considerations.

7.47(1) Consolidation—severance. The rules regarding consolidation and severance in 481—10.10(10A,17A) apply.

7.47(2) Rights of appellants during hearings. All rights afforded appellants at rule 441—7.8(17A) shall apply.

441—7.48(17A) Appeal record.

7.48(1) The appeal record shall consist of all items specified in Iowa Code section 17A.16.

7.48(2) The party that requests a transcription of the proceedings shall bear the cost.

441—7.49(17A) Pleadings. The rules regarding pleadings in 481—10.11(10A,17A) apply.

441—7.50(17A) Ex parte communications. The rules regarding ex parte communications specified in subrule 7.9(1) and Iowa Code section 17A.17 apply.

441—7.51(17A) Right of judicial review. The rules regarding right of judicial review specified in subrule 7.12(3) and Iowa Code section 17A.19 apply.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 6. Rescind 441—Chapter 9 and adopt the following new chapter in lieu thereof:

CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

441—9.1(17A,22) Statement of policy, purpose and scope of chapter.

9.1(1) The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The department is committed to the policies set forth in Iowa Code chapter 22; department staff shall cooperate with members of the public in implementing the provisions of that chapter.

These rules also implement the federal Health Insurance Portability and Accountability Act (HIPAA) regulations at 45 CFR Parts 160 and 164 as amended to August 14, 2002. These rules set forth the standards the department must meet to protect the privacy of protected health information. The department is a hybrid entity for purposes of HIPAA. The rules on protected health information apply only to those parts of the department that are considered part of the covered entity.

9.1(2) This chapter does not:

a. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the rules of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

e. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

f. Require the agency to create, compare or procure a record solely for the purpose of making it available.

441—9.2(17A,22) Definitions. As used in this chapter:

“*Business associate*” means the same as defined in 45 CFR 160.103 as amended to June 27, 2014.

“*Client*” means a person who has applied for or received services or assistance from the department.

“*Confidential record*” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Covered entity*” means the same as defined in 45 CFR 160.103 as amended to June 27, 2014.

“*Custodian*” means the director of the department or the director’s designee.

“*Data aggregation*” is the same as defined in 45 CFR §164.501 as amended to January 25, 2013.

“*Designated record set*” is the same as defined in 45 CFR §164.501 as amended to January 25, 2013, including:

1. The medical records about subjects that are maintained for facilities;
2. The enrollment, payment, and eligibility record systems maintained for Medicaid; or
3. The enrollment, payment, and eligibility record systems maintained for the hawki program that are used, in whole or in part, by the hawki program to make decisions about subjects.

For purposes of this definition, the term “record” means the same as defined in 45 CFR §164.501 as amended to January 25, 2013.

“*Disclosure*” means the same as defined in 45 CFR 160.103 as amended to June 27, 2014.

“*Facility*” or “*facilities*” means, with respect to HIPAA rules about health information, one or more of these department institutions: Cherokee mental health institute, Clarinda mental health institute, Glenwood resource center, Independence mental health institute, Mount Pleasant mental health Institute, and Woodward resource center.

“*Health care*” means the same as defined in 45 CFR 160.103 as amended to June 27, 2014.

“*Health care clearinghouse*” means the same as defined in 45 CFR 160.103 as amended to June 27, 2014.

“*Health care operations*” for covered entities in the department has the same definition as that stated in 45 CFR 164.501 as amended to January 25, 2013.

“*Health care provider*” means the same as defined in 45 CFR 160.103 as amended to June 27, 2014.

“*Health information*” means the same as defined in 45 CFR 160.103 as amended to June 27, 2014.

“*Health oversight agency*” means the same as defined in 45 CFR §164.501 as amended to January 25, 2013.

“*Health plan*” means an individual or group plan that provides or pays the cost of medical care, as defined at 45 CFR 160.103 as amended to June 27, 2014. In the department, “health plan” means Medicaid or hawki.

“*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996.

“*Law enforcement official*” means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to:

1. Investigate or conduct an official inquiry into a potential violation of law; or
2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

“*Legal representative*” is a person recognized by law as standing in the place or representing the interests of another for one or more purposes.

“*Mental health information*” means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services (as defined in Iowa Code section 228.1(8)) and which relates to the diagnosis, course, or treatment of the person’s mental or emotional condition.

“*Open record*” means a record other than a confidential record.

“*Payment*,” with respect protected health information, has the same definition as that stated in 45 CFR §164.501 as amended to January 25, 2013. In the department, “payment” applies to subjects for whom health care coverage is provided under the Medicaid program or the hawki program.

“*Personally identifiable information*” means information about or pertaining to the subject of a record which identifies the subject and which is contained in a record system.

“*Personal representative*” means someone designated by another as standing in the other’s place or representing the other’s interests for one or more purposes. The term “personal representative” includes, but is not limited to, a legal representative. For disclosure of protected health information, the definition of “personal representative” is more restrictive, as described at rule 441—9.15(17A,22).

“*Protected health information*” means the same as defined in 45 CFR §160.103 as amended to June 27, 2014.

“*Psychotherapy notes*” means the same as defined in 45 CFR §164.501 as amended to January 25, 2013.

“*Public health authority*” means the same as defined in 45 CFR §164.501 as amended to January 25, 2013.

“*Record*” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

“*Record system*” means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of a subject, number, symbol, or other unique identifier assigned to a subject.

“*Subject*” means the person who is the subject of the record, whether living or deceased.

“*Substance abuse information*” means information which indicates the identity, diagnosis, prognosis, or treatment of any person in an alcohol or drug abuse program.

“*Transaction*” means the same as defined in 45 CFR §160.103 as amended to June 27, 2014.

“*Treatment*” means the same as defined in 45 CFR §164.501 as amended to January 25, 2013.

“*Use*,” with respect to protected health information, means the same as defined in 45 CFR §160.103 as amended to June 27, 2014.

“*Workforce*,” with respect to protected health information, means the same as defined in 45 CFR §160.103 as amended to June 27, 2014.

441—9.3(17A,22) Requests for access to records.

9.3(1) *Location of record.* A request for access to a record should be directed to the director’s office 1305 East Walnut Street, Des Moines, Iowa 50319. If a request for access to a record is misdirected, department personnel will promptly forward the request to the department’s records officer.

9.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

9.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information.

9.3(4) *Response to requests.* Access to an open record will be provided upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4).

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 441—9.4(17A,22) and other applicable provisions of law.

9.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records shall be

supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

9.3(6) Copying. A reasonable number of copies of an open record may be made in the department office. If photocopy equipment is not available in the department office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

9.3(7) Fees. The department may charge fees as permitted by Iowa Code chapter 22. The department will publish a fee schedule for open records on its website. The department may charge a fee for the cost of preparing an explanation or summary of health information. The department and the subject requesting the information shall agree to the amount of any fee imposed before the department prepares the explanation or summary.

441—9.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 441—9.3(17A,22).

9.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

9.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

9.4(3) Notice to subject of record and opportunity to obtain injunction. Except as provided in 441—subrule 175.41(2), after the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

9.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

9.4(5) Request granted. Except as provided in 441—subrule 175.41(2), when the custodian grants a request for access to a confidential record, the custodian shall notify the requester or the person who is to receive the information and include any limits on the examination and copying of the record.

9.4(6) Records requiring special procedures. Special procedures are required for access to:

- a. Child abuse information. Access to child abuse information is obtained according to rules 441—175.41(235A) and 441—175.42(235A).
- b. Dependent adult abuse information. Access to adult abuse information is governed by rule 441—176.9(235A).

441—9.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examinations. The custodian may treat a record as a confidential record and withhold it from

examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

9.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

9.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian.

a. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

b. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit stating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts.

c. Requests to temporarily treat a record as a confidential record shall specify the precise period of time for which that treatment is requested.

d. A person filing such a request shall, if possible, provide a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department by the person requesting confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

9.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the department does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

9.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

9.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

9.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

9.5(7) *Requesting privacy protection for protected health information.*

a. Requesting restrictions on protected health information use or disclosure. Subjects may complete a Request to Restrict Use or Disclosure of Health Information form. The department will follow the requirements of 45 CFR §164.522 as amended to January 25, 2013, in responding to these requests.

b. Requesting the receipt of communications of protected health information by alternative means or at alternative locations. Subjects may complete a Request to Change How Health Information Is Provided form. The department will follow the requirements of 45 CFR §164.522 as amended to January 25, 2013, in responding to these requests. For Medicaid and hawki, the subject is required to clearly indicate the reason for requesting the confidential communication. Facilities shall not require the subject to explain the basis for the request as a condition of providing confidential communications.

441—9.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

9.6(1) *All programs.* Except as otherwise provided by law, a subject may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that subject. However, the subject is not authorized to alter the original copy of the record or to expand the official record of any department proceeding.

a. The subject shall send the request to review such a record or the written statement of additions, dissents, or objections to the department.

b. The request to review such a record or the written statement of additions, dissents, or objections must be dated and signed by the subject, and shall include the current address and telephone number of the subject or the subject's representative.

9.6(2) *Additional procedures for protected health information.* The department will follow the protected health information right to amend standards as outlined in 45 CFR §164.526 as amended to January 15, 2013. A subject shall submit a request for amendment to the department on a Request to Amend Health Information form published on the department's website. The subject shall provide a reason to support the requested amendment.

441—9.7(17A,22,228) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records to be disclosed, the particular person or class of persons to whom the record may be disclosed, and the time period during which the record may be disclosed. The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the department on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the department to disclose records about that person to the person's attorney. No confidential information about clients of the department shall be released without the client's consent, except as otherwise provided in these rules. Release of confidential information includes granting access to or allowing the copying of a record, providing information either in writing or orally, or acknowledging information to be true or false.

9.7(1) *Release forms.*

a. *Releases allowing the department to provide confidential information.* Subjects should complete the Authorization for the Department to Release Information for releases that do not involve protected health information.

b. *Releases allowing the department to provide confidential information, including protected health information.* When consent or authorization for use or disclosure of health information is required, the department shall use Form 470-3951, Authorization to Obtain or Release Health Care Information, or a HIPAA authorization form from another source that meets HIPAA requirements. The department shall not require a subject to sign a HIPAA authorization form as a condition of treatment, payment, enrollment in a health plan, or eligibility for benefits. The department as a health care provider

may require a subject to sign a HIPAA authorization form for the use or disclosure of protected health information for research, as a condition of the subject's receiving research-related treatment. A subject may revoke a HIPAA authorization at any time, provided that the revocation is in writing using the Request to End an Authorization form, except to the extent that the department has taken action in reliance thereon.

(2) Except as provided in subparagraph 9.7(1) "c"(1), department staff shall release mental health or substance abuse information only with authorization on the Consent to Obtain and Release Information form, or a form from another source that meets requirements of law.

c. Releases allowing the department to obtain confidential information from a third party. The department is required to obtain confidential information from third parties. The department may make these requests only when the client has authorized the release on one of the following forms:

- (1) Authorization for Release of Information.
- (2) Household Member Questionnaire.
- (3) Bank or Credit Union Information.
- (4) Addendum for Application and Review Forms for Release of Information.
- (5) Request for School Verification.
- (6) Employer's Statement of Earnings.
- (7) Verification of Educational Financial Aid.
- (8) Financial Institution Verification.
- (9) Authorization to Obtain or Release Health Care Information.

d. Releases for photographs and recordings. The department uses Authorization to Take and Use Photographs, and Authorization to Take and Use Photographs of Minor or Ward forms, for permission to use photographs in department publications. The department shall obtain authorization from the subject or person responsible (such as a guardian, custodian, or personal representative) for the subject before taking photographs or making any type of recording for any purpose other than those specifically allowed by law or for internal use within an institution.

9.7(2) Exceptions to use of release forms.

a. Public official. A letter from the subject to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the department shall be treated as an authorization to release information. The department shall release sufficient information about the subject to the official to resolve the matter.

b. Medical emergency. Department staff may authorize release of confidential information to medical personnel in a medical emergency if the subject is unable to give or withhold consent. As soon as possible after the release of information, the subject shall be advised of the release.

c. Abuse information. Consent to release information is not required to gather information for investigations of child abuse or dependent adult abuse.

9.7(3) Opportunity for subject to agree or object. This subrule describes when the department may use or disclose protected health information, without a written authorization, to persons involved in the subject's care and for notification purposes. However, the department shall give the subject an opportunity to agree or object, unless this requirement is waived as specified in paragraph 9.7(3) "e."

a. Involvement in the subject's care. The department may disclose protected health information that is directly relevant either to a subject's care or to payment related to the subject's care, provided payment is relevant to the person's involvement in the subject's care. The person involved must be:

- (1) A family member;
- (2) Another relative;
- (3) A close personal friend of the subject; or
- (4) Any other person identified by the subject.

b. Notification purposes. The department may use or disclose protected health information to notify, or assist in notifying, identifying or locating a family member, a personal representative of the subject, or another person responsible for the care of the subject of the subject's location, general condition or death. For disaster relief purposes, the use or disclosure shall be in accordance with paragraph 9.7(3) "f."

c. Uses and disclosures with the subject present. If the subject is present for, or available before, a use or disclosure permitted by this subrule and has the capacity to make health care decisions, the department may use or disclose the protected health information if the department:

- (1) Obtains the subject's agreement;
- (2) Provides the subject with the opportunity to object to the disclosure, and the subject does not express an objection; or
- (3) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the subject does not object to the disclosure.

d. Informing the subject. The department may orally inform the subject of and obtain the subject's oral agreement or objection to a use or disclosure permitted by this subrule.

e. Limited uses and disclosures when the subject is not present. When the subject is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the subject's incapacity or an emergency circumstance, the department may, in the exercise of professional judgment, determine that disclosure is in the best interest of the subject.

(1) When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the person's involvement with the subject's health care.

(2) The department may use professional judgment and its experience with common practice to make reasonable inferences of the subject's best interest in allowing a person to act on behalf of the subject to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

f. For disaster relief purposes. The department may use protected health information or disclose protected health information to a public or private organization authorized by law or by its charter to assist in disaster relief efforts for the purpose of coordinating with these organizations the uses or disclosures permitted by paragraph 9.7(3) "b." The requirements in paragraphs 9.7(3) "c" and "d" apply to these uses and disclosures to the extent that the department, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

441—9.8(17A,22) Notice to suppliers of information. When the department requests a person to supply information about that person, the department shall notify the person of how the information will be used, which persons outside the department might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. The notice shall generally be given at the first contact with the department and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or where it would compromise the purpose of a department investigation.

441—9.9(17A,22) Release to subject.

9.9(1) Access by subjects to protected health information. The department will follow the access of individuals to protected health information standards as outlined in 45 CFR §164.524 as amended to February 6, 2014. Subjects shall submit all requests for access to the department using the Request for Access to Health Information form. If the department does not maintain the protected health information that is the topic of the subject's request for access, and the department knows where the requested information is maintained, the department shall inform the subject where to direct the request for access.

441—9.10(17A,22) Use and disclosure without consent of the subject. Open records are routinely disclosed without the consent of the subject. To the extent allowed by law, the department may also use and disclose confidential information without the consent of the subject or the subject's representative.

9.10(1) Internal use. Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use confidential records.

9.10(2) Audits and health oversight activities.

a. Audits. Information concerning program expenditures and client eligibility is released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. Information is also released to auditors from federal agencies when those agencies provide program funds.

b. Health oversight activities. The department will follow the uses and disclosures standards for health oversight activities as outlined in 45 CFR §164.512 as amended to January 6, 2016.

9.10(3) Program review. Information concerning client eligibility and benefits is released to state or federal officials responsible for determining whether the department is operating a program lawfully. These officials include the ombudsman office under Iowa Code section 2C.9, the auditor of state under Iowa Code section 11.2, the Office of Inspector General in the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services.

9.10(4) Contracts and agreements with agencies and persons.

a. The department may enter into contracts or agreements with public or private agencies to carry out the department's official duties. Information necessary to carry out these duties may be shared with these agencies. The department may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if the department obtains satisfactory assurance that the business associate will appropriately safeguard the information.

b. The department may enter into agreements to share information with agencies administering federal or federally assisted programs which provide assistance or services directly to persons on the basis of need. Only information collected in the family investment program, the child care assistance program, the food assistance program, the refugee resettlement program, or the child support recovery program may be shared under these agreements.

c. To meet federal income and eligibility verification requirements, the department has entered into agreements with the department of workforce development, the United States Internal Revenue Service, and the United States Social Security Administration. The department obtains information regarding persons whose income or resources are considered in determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, child care assistance, food assistance, Medicaid, state supplementary assistance and foster care. Identifying information regarding clients of these programs is released to these agencies. The information received may be used for eligibility and benefit determinations.

d. To meet federal requirements under the Immigration Reform and Control Act of 1986 (IRCA) relating to the Systematic Alien Verification for Entitlements (SAVE) program, the department has entered into an agreement with the Bureau of Citizenship and Immigration Service (BCIS). Under the agreement, the department exchanges information necessary to verify alien status for the purpose of determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, food assistance, Medicaid, state supplementary assistance and foster care assistance. Identifying information regarding these subjects is released to the BCIS. The information received may be used for eligibility and benefit determinations.

e. The department has entered into an agreement with the department of workforce development to provide services to family investment program clients participating in the PROMISE JOBS program as described at 441—Chapter 93. Information necessary to carry out these duties shall be shared with the department of workforce development, as well as with its subcontractors.

f. The department has entered into an agreement with the department of education, vocational rehabilitation, disability determination services, to assist with Medicaid disability determinations.

g. The department has entered into an agreement with the department of education to share information that assists both schools and department clients in carrying out the annual verification process required by the United States Department of Agriculture, Food and Nutrition Service. That

federal agency requires the department of education and local schools to verify eligibility of a percentage of the households approved for free-meal benefits under the school lunch program. When a department office receives a written request from the local school, the department office responds in writing with the current family investment program and food assistance program status of each recipient of free meals listed in the request. Other client-specific information is made available only with written authorization from the client.

9.10(5) Release for judicial and administrative proceedings. Information is released to the court as required in Iowa Code sections 125.80, 125.84, 125.86, 229.8, 229.10, 229.13, 229.14, 229.15, 229.22, 232.48, 232.49, 232.52, 232.71B, 232.81, 232.97, 232.98, 232.102, 232.111, 232.117 and 235B.3.

a. The department may disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the department discloses only the protected health information expressly authorized by the order and the court makes the order knowing that the information is confidential.

b. When a court subpoenas information that the department is prohibited from releasing, the department shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

9.10(6) Fraud. Information concerning suspected fraud or misrepresentation to obtain department services or assistance is disclosed to the department of inspections, appeals, and licensing and to law enforcement authorities.

9.10(7) Service referrals. Information concerning clients may be shared with purchase of service providers under contract to the department.

a. Information concerning the client's circumstances and need for service is shared with prospective providers to obtain placement for the client. If the client is not accepted for service, all written information released to the provider shall be returned to the department.

b. When the information needed by the provider is mental health information or substance abuse information, the subject's specific consent is required.

9.10(8) Medicaid billing. Only the following information shall be released to bona fide providers of medical services in the event that the provider is unable to obtain it from the subject and is unable to complete the Medicaid claim form without it:

- a.* Patient identification number.
- b.* Health coverage code as reflected on the subject's medical card.
- c.* The subject's date of birth.
- d.* The subject's eligibility status for the month that the service was provided.
- e.* The amount of spenddown.
- f.* The bills used to meet spenddown.

9.10(9) County billing. Information necessary for billing is released to county governments that pay part of the cost of care for intermediate care facility services under 441—subrule 82.14(2) or Medicaid waiver services under rule 441—83.70(249A) or 441—83.90(249A). This information includes client names, identifying numbers, provider names, number of days of care, amount of client payment, and amount of payment due.

9.10(10) Child support recovery. The child support recovery unit has access to information from most department records for the purpose of establishing and enforcing support obligations. Information about absent parents and recipients of child support services is released according to the provisions of Iowa Code chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, 598, 600B, and any other support chapter. Information is also released to consumer reporting agencies as specified in rule 441—98.116(252B).

9.10(11) Refugee resettlement program. Contacts with both sponsor and resettlement agencies are made as a part of the verification process to determine eligibility or the amount of assistance. When a refugee applies for cash or Medicaid, the refugee's name, address, and telephone number are given to the refugee's local resettlement agency.

9.10(12) Abuse investigation. The central abuse registry disseminates child abuse information and dependent adult abuse information as provided in Iowa Code sections 235A.15 and 235B.7, respectively.

Reports of child abuse and dependent adult abuse investigations are submitted to the county attorney as required in Iowa Code sections 232.71B and 235B.3. Results of the investigation of a report by a mandatory reporter are communicated to the reporter as required in Iowa Code sections 235A.17(2) and 235A.15(2) "b"(5).

9.10(13) Foster care. Information concerning a child's need for foster care is shared with foster care review committees or foster care review boards and persons named in the case permanency plan.

9.10(14) Adoption. Adoptive home studies completed on families who wish to adopt a child are released to licensed child-placing agencies, to the United States Immigration and Naturalization Service, and to adoption exchanges. Information is released from adoption records as provided in Iowa Code sections 600.16 and 600.24.

9.10(15) Disclosures to law enforcement.

a. Disclosures by workforce members who are crime victims. The department is not considered to have violated the requirements of this chapter if a member of its workforce who is the victim of a criminal act discloses confidential information to a law enforcement official, provided that:

(1) The confidential information disclosed is about the suspected perpetrator of the criminal act and intended for identification and location purposes; and

(2) The confidential information disclosed is limited to the following information:

1. Name and address.

2. Date and place of birth.

3. Social security number.

4. ABO blood type and Rh factor.

5. Type of injury.

6. Date and time of treatment.

7. Date and time of death, if applicable.

8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

b. Crime on premises. The department may disclose to a law enforcement official protected health information that the department believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the department.

c. Decedents. The department may disclose protected health information to a law enforcement official about a subject who has died when the death resulted from child abuse or neglect or the death occurred in a department facility.

d. Other. The department may disclose confidential information to a law enforcement official when otherwise required or allowed by this chapter, such as disclosures about victims of child abuse or neglect; disclosures to avert a threat to health or safety, or to report suspected fraud; disclosures required by due process of law, such as disclosures for judicial and administrative proceedings; or other disclosures required by law.

9.10(16) Response to law enforcement. The address of a current recipient of family investment program benefits may be released upon request to a federal, state or local law enforcement officer if the officer provides the name of the recipient, and the officer demonstrates that:

a. The recipient is a fugitive felon who is fleeing prosecution, custody or confinement after conviction under state or federal law, or who is a probation or parole violator under state or federal law, or

b. The recipient has information that is necessary for the officer to conduct the officer's official duties, and

c. The location or apprehension of the recipient is within the officer's official duties.

9.10(17) Research. Information that does not identify individual clients may be disclosed for research purposes with the consent of the custodian responsible for the records.

a. Mental health information may be disclosed for purposes of scientific research as provided in Iowa Code sections 228.5 and 229.25. Requests to do research involving records of a department facility shall be approved by the designated authority.

b. Abuse registry information may be disclosed for research purposes as provided in rules 441—175.42(235A) and 441—176.12(235B) and authorized by Iowa Code sections 235A.15(2) “e”(1) and 235B.6(2) “e”(1).

c. For research relating to protected health information, the researcher shall provide the department with information about the nature of the research, the protocol, the type of information being requested, and any other relevant information that is available concerning the request. If the researcher feels that contact with the subject is needed, the researcher shall demonstrate to the department that the research cannot be conducted without contact with the subject. The researcher shall pay for the costs of obtaining authorizations needed to contact the subjects and for the cost of files and preparation needed for the research.

9.10(18) Threat to health or safety.

a. All programs. A client’s name, identification, location, and details of a client’s threatened or actual harm to department staff or property may be reported to law enforcement officials. Other information regarding the client’s relationship to the department shall not be released. When a department staff person believes a client intends to harm someone, the staff person may warn the intended victim or police or both. Only the name, identification, and location of the client and the details of the client’s plan of harm shall be disclosed.

b. Protected health information. The department will follow the disclosure standards in 45 CFR §164.512 as amended to January 6, 2016.

9.10(19) Required by law.

a. Information is shared with other agencies without a contract or written agreement when federal law or regulations require it.

b. The department may use or disclose protected health information to the extent that use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.

c. State law shall preempt rules in this chapter about protected health information when any one of the following conditions exists:

(1) Exception granted by Secretary of Health and Human Services under 45 CFR 160.204 as amended to January 25, 2013.

(2) State law more stringent. The provision of state law relates to the privacy of protected health information and is more stringent than a requirement of this chapter, within the meaning of “more stringent” found at 45 CFR 160.202 as amended to January 25, 2013.

(3) Reporting requirements. The provision of state law, including state procedures established under the law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(4) Requirements related to audits, monitoring, evaluation, licensing, and certification. The provision of state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities and persons.

9.10(20) Treatment, payment, or health care operations.

a. The department may use or disclose protected health information for treatment, payment, or health care operations, as permitted by 45 CFR 164.506 as amended to January 25, 2013, except for psychotherapy notes, which are subject to the limits described in paragraph 9.10(21) “b.” The use or disclosure shall be consistent with other applicable requirements of this chapter.

b. The department may use or disclose psychotherapy notes without an authorization for any one of the following reasons:

(1) To carry out the following treatment, payment, or health care operations:

1. Use by the originator of the psychotherapy notes for treatment.

2. Use or disclosure by the department for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling.

3. Use or disclosure by the department to defend itself in a legal action or other proceeding brought by the subject.

(2) When required by the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations.

(3) For health oversight activities with respect to the oversight of the originator of the psychotherapy notes.

(4) When necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public as described in this chapter.

(5) When required by law as described in this chapter.

(6) To disclose protected health information in the designated record set to a coroner or medical examiner as described in this chapter.

9.10(21) Other uses and disclosures for which an authorization or opportunity to agree or object is not required. The department may use or disclose protected health information Other uses and disclosures for which an authorization or opportunity to agree or object is not required, as permitted by 45 CFR 164.512 as amended to January 25, 2013.

9.10(22) *Victims of domestic violence.* The department shall disclose confidential information about an individual whom the department reasonably believes to be a victim of domestic violence when required by state law.

9.10(23) *Whistle blowers.* The department is not considered to have violated the requirements of this chapter when a member of its workforce or a business associate discloses protected health information, provided that:

a. The workforce member or business associate has a good-faith belief that the department or a business associate has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or has provided care, services, or conditions that potentially endanger one or more patients, workers, or the public; and

b. The disclosure is made to one of the following:

(1) A health oversight agency or public health authority authorized by law to investigate or oversee conduct or conditions for the purpose of reporting the allegation of failure to meet professional standards or misconduct.

(2) An appropriate health care accreditation organization.

(3) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate.

9.10(24) *Secondary to a use or disclosure of protected health information.* The department may use or disclose protected health information that is secondary to a use or disclosure otherwise permitted or required by these rules, such as when a visitor in a facility overhears a doctor speaking to a subject about the subject's health.

9.10(25) *De-identified data or a limited data set.* The department may use or disclose protected health information to create information that is de-identified or a limited data set under the conditions specified in 45 CFR 164.514 as amended to August 14, 2002.

441—9.11(22) Availability of records.

9.11(1) *Open records.* Department records are open for public inspection and copying unless otherwise provided by rule or law.

9.11(2) *Confidential records.* Iowa Code chapters governing the operations of the department establish the confidential nature of many department records. The department also administers several federally funded programs and is authorized by Iowa Code section 22.9 to enforce confidentiality standards from federal law and regulation as required for receipt of the funds where the department has determined that the right to examine and copy public records under Iowa Code section 22.2 would cause the denial of funds, services, or essential information from the United States government that would otherwise be available to the department.

9.11(3) Authority to release confidential records. The department may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other provision of law.

441—9.12(22,252G) Personally identifiable information. The nature and extent of personally identifiable information collected by the department varies by the type of record. This rule describes personally identifiable information collected, maintained, and retrieved by the department by personal identifiers in record systems and the legal authority for the collection of that information. This rule also identifies the legal authority for keeping some or all of the collected personally identifiable information confidential.

9.12(1) Department administrative records.

a. Personnel records. These records contain information about employees, families and dependents, and applicants for positions with the department. Some of this information is confidential under Iowa Code sections 22.7(11) and 22.7(18).

b. Fiscal records. These records contain itemized vouchers collected from individuals pursuant to Iowa Code section 8A.514. Some of this information is confidential under Iowa Code sections 22.7(11) and 22.7(18).

c. Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy. These records are confidential as outlined in Iowa Code sections 217.30, 22.7(4) and 622.10.

9.12(2) Program records.

a. Adoption investigator certification. These records are collected pursuant to Iowa Code chapter 600.

b. Adoption program records. These records are collected pursuant to Iowa Code sections 600.8 and 600.16. These records are confidential as outlined in Iowa Code sections 600.16 and 600.24.

c. Appeals. These records are collected pursuant to Iowa Code section 217.1. Some of these records are confidential as outlined in Iowa Code section 217.1.

d. AIDS drug reimbursement program. These records are collected for purposes of implementing a federal grant program authorized by HR 1827. Certain patient records are confidential as outlined in Iowa Code section 141A.9.

e. Brain injury service program recipients. These records are collected pursuant to Iowa Code section 135.22B. These records are confidential as outlined in Iowa Code section 135.22(2).

f. Center for congenital and inherited disorders. These records are collected pursuant to Iowa Code chapter 136A. These records are confidential as outlined in Iowa Code section 136A.7.

g. Central registry for brain or spinal cord injuries. These records are collected pursuant to Iowa Code section 135.22. Except for statistical reports, these records are maintained as confidential pursuant to Iowa Code section 135.22.

h. Child abuse program. These records are collected pursuant to Iowa Code section 235A.14. These records are confidential as outlined in Iowa Code sections 235A.13, 235A.15, 235A.16, and 235A.17.

i. Childcare assistance client records. These records are collected pursuant to Iowa Code section 237A. These records are confidential as outlined in Iowa Code section 237A.13.

j. Childcare facility licensing. These records are collected pursuant to Iowa Code chapter 237A. Some of these records are confidential as outlined in Iowa Code section 237A.7.

k. Childhood lead poisoning prevention program. These records are collected pursuant to Iowa Code sections 135.100 to 135.105. Certain of these records are confidential as outlined in Iowa Code section 139A.

l. Child support recovery program. These records are collected pursuant to Iowa Code chapters 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, and Iowa Code sections 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B and 600.16A. These records are confidential as outlined in Iowa Code sections 252B.9 and 252G.5, 42 U.S.C. §654(26), 42 U.S.C. §654a(d), 45 CFR §303.21 and 307.13.

m. Chronic disease prevention and management programs. These records are collected pursuant to Iowa Code section 135.11(1). Certain medical information in these records is confidential as outlined in Iowa Code section 22.7(2).

n. Collection service center payment. These records are collected pursuant to Iowa Code sections 252B.9, 252B.13A and 252B.16. These records are confidential as outlined in Iowa Code section 252B.9(2), 42 U.S.C. § 654a(d) and 45 CFR §307.13.

o. Criminal and juvenile justice information. These records are collected pursuant to Iowa Code sections 216A.136 and 216A.138 and through interagency agreements.

p. Dental health program. These records are collected pursuant to Iowa Code section 135.11(19). Certain medical information in these records is confidential as outlined in Iowa Code section 22.7(2).

q. Dependent adult abuse program. These records are collected pursuant to Iowa Code section 235B.1. These records are confidential as outlined in Iowa Code section 235B.1.

r. Domestic abuse death review team. These records are collected pursuant to Iowa Code section 135.110. These records are confidential as outlined in Iowa Code section 135.11.

s. Emergency medical services. These records are collected pursuant to Iowa Code chapter 147A. Some of these records are confidential as outlined in Iowa Code section 147A.25.

t. Environmental health program. These records are collected pursuant to Iowa Code section 135.11(1) and PL 96-510, Section 104(d)(1), 40 CFR 763 effective June 28, 1983, and 40 CFR 761 effective May 31, 1979, dealing with asbestos, PCB and other environmental health factors. Certain medical information in the work-related disease program file may be confidential as outlined in Iowa Code section 22.7(2). Certain asbestos and PCB inspection records are collected under contract with the federal Environmental Protection Agency, and requests for such records will be referred to that agency.

u. Family investment program client records. These records are collected pursuant to Iowa Code section 234.6. These records are confidential as outlined in Iowa Code section 217.30, 42 U.S.C. §602(a)(1) and §1306a.

v. Food assistance client files. These records are collected pursuant to Iowa Code section 234.6. These records are confidential as outlined in Iowa Code section 217.30, 7 U.S.C. §2020(e)8 and 7 CFR 272.1(c) and (d) as amended to January 1, 1987.

w. Foster care client/service files. These records are collected pursuant to Iowa Code sections 237.3 to 237.5. These records are confidential as outlined in Iowa Code section 237.9.

x. Foster care facility licensing. These records are collected pursuant to Iowa Code chapter 237. Some of these records are confidential as outlined in Iowa Code section 237.9.

y. Foster care review board files. These records are collected pursuant to Iowa Code sections 237.17. Some of these records are confidential as outlined in Iowa Code section 237.21.

z. Hawki client files. These records are collected pursuant to Iowa Code section 514I.4. These records are confidential as outlined in Iowa Code section 514I.4, and 42 CFR 457.1110 as amended to January 1, 2001.

aa. Human rights advocacy files. These records are collected pursuant to Iowa Code chapter 216A; the Omnibus Budget Reconciliation Act, P.L. 97-35; Juvenile Justice and Delinquency Prevention Act, P.L. 93-415; and the Victims Compensation and Assistance Act, P. L. 98-473. These records are confidential as outlined in Iowa Code section 22.7(18).

bb. Long term and managed care ombudsman complaints. These records are collected pursuant to Iowa Code sections 135C.37 and 231.42. These records are confidential as outlined in Iowa Code sections 135C.37 and 231.42.

cc. Maternal and child health program. These records are collected pursuant to Iowa Code section 135.11(20). Records that contain medical information are confidential pursuant to Iowa Code section 22.7(2).

dd. Medicaid clients. These records are collected pursuant to Iowa Code section 249A.4. These records are confidential as outlined in Iowa Code section 217.30, 42 U.S.C. §1396a(7), and 42 CFR 431.300 to 307 as amended to November 13, 1996.

ee. Medicaid provider information. These records are collected pursuant to Iowa Code section 249A.4. Some of these records are confidential as outlined in Iowa Code section 217.30, and 42 U.S.C. §1396a(7), 42 CFR 431.300 to 307 as amended to November 13, 1996.

ff. Newborn and infant hearing screening program. These records are collected pursuant to Iowa Code section 135.131. Information which identifies an individual patient is confidential as outlined in Iowa Code section 135.131.

gg. Nutrition and WIC (supplemental food program for women, infants and children) program. These records are collected pursuant to Iowa Code section 135.11(1) and Chapter 17 of the federal Child Nutrition Act of 1966 as amended. These records are confidential as outlined in 7 CFR 246 and Iowa Code section 22.7(2).

hh. Radiological health program. These records are collected pursuant to Iowa Code chapters 136B and 136C. Certain of these records are confidential as outlined in 641—39.4(24).

ii. Refugee health program. These records are collected pursuant to Iowa Code section 135.11(1) and Section 412(c)(3) of the federal Immigration and Naturalization Act. Records that contain medical information are confidential pursuant to Iowa Code section 22.7(2).

jj. Refugee resettlement client records. These records are collected pursuant to Iowa Code section 217.1. These records are confidential as outlined in Iowa Code section 217.30, and 45 CFR 400.27 as amended to March 22, 2000.

kk. Reportable diseases and other diseases and health conditions, including lead and other heavy metal poisonings. These records are collected pursuant to Iowa Code chapter 139A. Except for statistical reports, these records are confidential as required by Iowa Code chapter 139A.

ll. Reportable sexually transmitted diseases or infections. These records are collected pursuant to Iowa Code chapter 139A. Except for statistical reports, these records are confidential as required by Iowa Code chapter 139A.

mm. State institution resident records. These records are collected pursuant to Iowa Code section 218.1. These records are confidential as outlined in Iowa Code sections 218.22, 229.24 and 229.25.

nn. State supplementary assistance clients. These records are collected pursuant to Iowa Code chapter 249. Some of these records are confidential as outlined in Iowa Code section 217.30.

oo. Substance abuse client records. These records are collected pursuant to Iowa Code chapters 125, 218, and 219 and sections 234.6 and 249A.4. These records are confidential as outlined in Iowa Code sections 125.37 and 125.93, 42 U.S.C. §29 dd.3 and ee.3, 42 CFR Part 2 as amended to October 1, 2002, and 38 U.S.C. §4132.

pp. Substance abuse program licensing complaints. These records are collected pursuant to Iowa Code chapter 125. Certain information in these records may be confidential as outlined in Iowa Code sections 22.7(2), 22.7(18) and 125.37.

qq. Title IV-E foster care and adoption assistance client files. These records are collected pursuant to Iowa Code sections 217.1, and 600.17 to 600.22. These records are confidential as outlined in Iowa Code section 217.30, 42 U.S.C. §671(a)(8), and 45 CFR 1355.30(1) as amended to November 23, 2001.

rr. Veterinary public health. These records are collected pursuant to Iowa Code chapter 139A. Certain medical information in these records may be confidential as outlined in Iowa Code chapter 139A.

ss. Vital records. These records are collected pursuant to Iowa Code chapter 144, including records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments and related data and correspondence. These records are confidential as outlined in Iowa Code section 144.43.

9.12(3) Other restricted data contained in department client records includes:

a. Department of revenue information. These records are collected pursuant to Iowa Code sections 252B.5 and 252B.9. These records are confidential as outlined in Iowa Code sections 421.17 and 422.20(1).

b. Department of workforce development information. These records are collected pursuant to Iowa Code chapters 239B, 249A, and 249C and section 252B.9. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §503(d) and (e).

c. Income and eligibility verification system. These records are collected pursuant to Iowa Code chapters 239B and 249A and sections 217.1, 234.6(7). These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §1230b-7.

d. Department of public safety information. These records are collected pursuant to Iowa Code sections 237.8, 237A.5 and 252B.9. These records are confidential as outlined in Iowa Code sections 692.2, 692.3, 692.8 and 692.18.

e. Federal tax return information. These records are collected pursuant to Iowa Code chapters 239B, 249A and 252B and Iowa Code sections 217.1, 234.6(7). These records are confidential as outlined in Iowa Code section 422.20(2) and 26 U.S.C. §6103.

f. Juvenile court information. These records are collected pursuant to Iowa Code chapter 232 and section 234.6. These records are confidential as outlined in Iowa Code sections 232.48, 232.97 and 232.147 to 232.151.

g. Peer review organization. These records are collected pursuant to Iowa Code section 249A.4. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §1320c-9.

h. United States Department of Health and Human Services information. These records are collected pursuant to Iowa Code chapters 239B, 249, 249A and 252B and sections 217.1 and 234.6(7). These records are confidential as outlined in Iowa Code section 217.30 and 42 CFR Part 401.134(c) as amended to October 1, 2002.

441—9.13(17A,22) Special policies and procedures for protected health information. The department will follow all special policies and procedures for using and disclosing protected health information as outlined in 45 CFR Part 164 as amended through December 31, 2023, including the minimum necessary standard, uses and disclosures for premium rating and related purposes, verification and documentation requirements, notice of privacy practices, the right to receive an accounting of disclosures, complaint procedures, appeal rights and record retention.

441—9.14(17A,22) Person who may exercise rights of the subject.

9.14(1) Adults. When the subject is an adult, including an emancipated minor, the subject's rights under this rule may also be exercised by the subject's legal or personal representative, except as provided in subrule 9.15(3).

9.14(2) Minors. Within the limits of subrule 9.15(3), when the subject is an unemancipated minor, the subject's rights under this rule shall be exercised only by the subject's legal representative, except as follows:

a. When the department otherwise deals with the minor as an adult, as in the case of minor parents under the family investment program.

b. When otherwise specifically provided by law. However, minor subjects shall be granted access to their own records upon request, subject to the limits in rule 441—9.9(17A,22).

9.14(3) Exceptions.

a. Scope of authority. Legal and personal representatives may act only within the scope of their authority. For protected health information, the designation must reflect the subject's ability to make health care decisions and receive protected health information. For example, court-appointed conservators shall have access to and authority to release only the following information:

- (1) Name and address of subject.
- (2) Amounts of assistance or type of services received.
- (3) Information about the economic circumstances of the subject.

b. Mental health information. Only an adult subject or a subject's legal representative may consent to the disclosure of mental health information. Records of involuntary hospitalization shall be released only as provided in Iowa Code section 229.24. Medical records of persons hospitalized under Iowa Code chapter 229 shall be released only as provided in Iowa Code section 229.25.

c. Substance abuse information. Only the subject may consent to the disclosure of substance abuse information, regardless of the subject's age or condition.

d. Failure to act in good faith. If the department has reason to believe that the legal or personal representative is not acting in good faith in the best interests of the subject, the department may refuse to release information on the authorization of the legal or personal representative.

e. Abuse, neglect, and endangerment situations. Notwithstanding a state law or any other requirement of this chapter, the department, in the exercise of professional judgment, may elect not to treat a person as a subject's personal representative if:

(1) The department has reason to believe that the subject has been or may be subjected to domestic violence, abuse, or neglect by the person; or

(2) The department has reason to believe that treating the person as a personal representative could endanger the subject.

f. Protected health information. A parent, guardian, or other person acting in place of a parent who does not represent the minor for protected health information may still access protected health information about the minor if required by law.

g. Deceased subjects. If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased subject or of the subject's estate, the department shall treat that person as a personal representative.

h. Other. If, under applicable law, the subject of a confidential record is precluded from having a copy of a record concerning the subject disclosed to a third party, the department shall not treat the third party as a personal representative.

These rules are intended to implement Iowa Code chapters 17A, 22, 135, 217, 228, and 252G and the Health Insurance Portability and Accountability Act of 1996.

ITEM 7. Rescind 441—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16 NOTICES

441—16.1(17A) Definitions.

“*Adequate notice*” means any notice of decision or notice of action that includes all of the following information:

1. A description of the action taken;
2. The effective date of the action;
3. The specific reasons supporting the action, stated language likely to be understood by the average program applicant or enrollee;
4. References to applicable provisions of law supporting the action;
5. An explanation of the right to appeal; and
6. The circumstances under which assistance is continued when an appeal is filed.

“*Adverse benefit determination*” means any adverse action taken by the department regarding assistance program benefits administered by the department or on the department's behalf, excluding department decisions about requests for exceptions to policy.

“*Assistance program*” means a program administered by the department or on the department's behalf through which qualifying individuals receive benefits or services.

“*Enrollee*” means any applicant for, or recipient of, benefits or services pursuant to an assistance program.

“*Timely*” means that the notice is sent at least ten calendar days before the date the adverse benefit determination would become effective. The timely notice period shall begin on the day after the notice is sent.

441—16.2(17A) Notices.

16.2(1) *Written timely and adequate notice.* When required by federal or state law, the department will provide written timely and adequate notice of the right to appeal any adverse benefit determination that affects an individual who is applying for, or receiving benefits from, an assistance program. The department will also provide written timely notice of pending actions for a state or federal tax or debtor offset.

16.2(2) *Adequate notice.* The department shall give adequate notice of the approval or denial of assistance or services; the approval or denial of a license, certification, approval, registration, or accreditation.

16.2(3) *Dispensing with timely notice.* Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued, when:

a. There is factual information confirming the death of the enrollee or of the family investment program payee and there is no relative available to serve as a new payee.

b. The enrollee provides a clear written, signed statement that the enrollee no longer wishes to receive assistance, or gives information which requires termination or reduction of assistance, and the enrollee has indicated, in writing, that the enrollee understands that the consequence of supplying the information is termination or reduction of assistance.

c. The enrollee has been admitted or committed to an institution that does not qualify for payment under an assistance program.

d. The enrollee has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

e. The whereabouts of the enrollee are unknown and mail directed to the enrollee has been returned by the post office indicating no known forwarding address. When the whereabouts of the enrollee become known during the payment period covered by the returned warrant, the warrant shall be made available to the enrollee.

f. The department establishes that the enrollee has been accepted for assistance in another state.

g. Cash assistance or food assistance is changed because a child is removed from the home as a result of a judicial determination or is voluntarily placed in foster care.

h. A change in the level of medical care is prescribed by the enrollee’s physician.

i. A special allowance or service granted for a specific period is terminated and the enrollee has been informed in writing at the time of initiation that the allowance or service shall terminate at the end of the specified period.

j. The notice involves an adverse determination made with regard to the preadmission screening requirements.

k. The department terminates or reduces benefits or makes changes as described at 441—subrule 40.27(3) or rule 441—75.52(249A).

l. The department terminates benefits for failure to return a completed report form, as described in paragraph 16.3(3)“*k.*”

m. The department approves or denies an application for assistance.

n. The department implements a mass change based on law or rule changes that affect a group of enrollees.

These rules are intended to implement Iowa Code chapter 17A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 8
“Payment of Small Claims”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 217.23
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 217

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yyp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 8 defines reimbursement of small claims procedures for HHS employees. It serves to ensure HHS employees can be reimbursed for damage to personal items incurred through service to HHS clients in a timely and efficient manner.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Not applicable.
 - Classes of persons that will benefit from the proposed rulemaking:
HHS employees, primarily facilities and field staff, will benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

| | SFY 2024 | SFY 2025 | SFY 2026 | SFY 2027 | SFY 2028 | Five-Year Total |
|--------------------------|------------|------------|------------|------------|------------|-----------------|
| Costs | | | | | | |
| Total Reimbursement* | \$2,570 | \$2,085 | \$6,430 | \$3,452 | \$1,109 | \$15,646 |
| Total Claims | 18 | 19 | 47 | 25 | 7 | 116 |
| Benefits | | | | | | |
| Increased Employee Trust | Intangible | Intangible | Intangible | Intangible | Intangible | |

*All monetary values have been rounded to the nearest dollar.

YTD as of 6/6/2023: Three claims have been approved for a total of \$652.

- Qualitative description of impact:

The nominal cost to reimburse employees for damaged personal property is justified by the benefits of retaining and supporting HHS facility and field staff workforce. Reimbursing employees for damaged personal items when in service to HHS clients helps to maintain an adequate workforce to support the critical needs of Iowans served by HHS.

3. Costs to the State:

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

In addition to the figure above, HHS incurs personnel costs for those team members tasked with processing claims for reimbursement. However, due to the small number of claims submitted for review, costs are absorbed into current HHS employee costs.

- Anticipated effect on state revenues:

None identified.

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

The costs and the benefits of the proposed chapter and inaction are largely the same due to the authorizing statute. The only difference between the proposed chapter and inaction is the added benefit of flexibility and a more streamlined process for HHS employees to submit and process claims under the proposed chapter.

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

Iowa Code section 217.23 requires HHS to promulgate rules on reimbursement processes. Aside from streamlining internal processes via this exercise, HHS is not authorized to establish less costly alternatives.

6. Alternative methods considered by the agency:

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

Not applicable.

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

Not applicable.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
PAYMENT OF SMALL CLAIMS

441—8.1(217) Authorization to reimburse. The department will follow Iowa Code section 217.23(2) when reimbursing employees for personal items damaged or destroyed by clients of the department during the employee's tour of duty. The claimant shall provide the department with a detailed written account of the incident, including an estimated cost of repair or replacement.

This rule is intended to implement Iowa Code section 217.23.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 11
“Collection of Debt”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8A.504
State or federal law(s) implemented by the rulemaking: Iowa Code sections 217.34, 234.12, 239B.14, and 249A.5

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 11 defines debt offset procedures for the legacy Department of Public Health (641—Chapter 179) and Department of Human Services (441—Chapter 11). Debt offset is intended to recoup overpayment or other debt owed to HHS. HHS impacted programs include but are not limited to Supplemental Nutrition Assistance Program, Family Investment Program, Medicaid, PROMISE JOBS, and Child Care Assistance.

Through the debt offset program, money is collected from individuals or entities having been identified as receiving an overpayment or otherwise owing funds to HHS. Repayment may include withholding part or all of federal or state tax refunds or other state payments owed to the debtor. Money collected is credited back to the program(s) making the claim.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Individuals or entities having been identified as receiving an overpayment or otherwise owing funds to the HHS will bear the cost.
 - Classes of persons that will benefit from the proposed rulemaking:
Other persons who depend on and utilize HHS program funds will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Over the last five fiscal years, HHS has cumulatively collected \$4.2 million in recoupment under the debt offset program, with an average of \$839,000 recovered each year (median \$859,000). Money

collected is used for additional service delivery or program development. Note: Debt offsets collected by programs moved out of HHS in the government reorganization have not been included in this analysis.

Identified Impacts*

| | SFY 2018 | SFY 2019 | SFY 2020 | SFY 2021 | SFY 2022 | Five-Year Total |
|------------------------|--------------|--------------|--------------|--------------|--------------|-----------------|
| Costs | | | | | | |
| HHS Implementation | -\$1,210,000 | -\$1,363,000 | -\$1,298,000 | -\$1,283,000 | -\$1,387,000 | -\$6,541,000 |
| Service Delivery | -\$665,000 | -\$1,045,000 | -\$906,000 | -\$859,000 | -\$718,000 | -\$4,193,000 |
| Benefits | | | | | | |
| Recouped Debts | \$665,000 | \$1,045,000 | \$906,000 | \$859,000 | \$718,000 | \$4,193,000 |
| Increased Public Trust | Intangible | Intangible | Intangible | Intangible | Intangible | Intangible |
| Net Value | -\$1,210,000 | -\$1,363,000 | -\$1,298,000 | -\$1,283,000 | -\$1,387,000 | -\$6,541,000 |

*All monetary figures have been rounded to the nearest thousand.

- Qualitative description of impact:

By recouping the overpaid funds, programs will have more funds to offer other participants enrolled in their programs.

3. Costs to the State:

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

HHS incurs personnel costs for those team members tasked with completing the debt offset procedure, as well as technology expenses.

The Iowa Department of Revenue (IDR) oversees the debt offset procedure for executive branch agencies; this was previously managed by the Department of Administrative Services (DAS). The Department of Inspections, Appeals, and Licensing (DIAL) provides investigation and customer service support for HHS debt collections. Implementation costs borne by these agencies have not been included in this analysis.

- Anticipated effect on state revenues:

Though the cost-benefit analysis shows a negative financial outcome, recoupment ensures publicly funded services are implemented as intended by the Iowa legislature and in compliance with state and federal regulations. This leads to public trust in HHS systems and programs. Further, collection of moneys owed to HHS confers a public benefit through use of returned funds to support qualifying service recipients and/or public program development.

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

HHS is implementing the debt offset program according to the parameters detailed in the Iowa Code and the procedure described in IDR administrative rules (previously DAS).

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

Not applicable.

6. Alternative methods considered by the agency:

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

Not applicable.

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

In the newly combined department, HHS does not require multiple debt offset chapters. HHS seeks to repeal the legacy Department of Public Health chapter and repromulgate all necessary rules under the legacy Department of Human Services 441—Chapter 11.

Small Business Impact

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

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

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

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11 COLLECTION OF DEBT

441—11.1(217) Definitions.

“*Current*” means that amount which is due and owing within the previous 12 months from the date of submission to the department of administrative services or that amount which is due and owing from the date the repayment agreement or court order is implemented, if less than 12 months, before the date of submission to the department of administrative services.

“*Current repayment*” means that payment of the cumulative sum due and owing in accordance with a repayment agreement or court order for the preceding 12 months or the date of the order or agreement if the order or agreement is more recent.

“*Debtor*” means a current or former recipient of public assistance that has been determined by the department to be responsible for the repayment of a particular debt. For supplemental nutrition assistance program (SNAP), “debtor” shall include all adult members of the SNAP household participating at the time the SNAP overpayment or program violation occurred and shall include nonrecipients found guilty of violating SNAP rules by committing an act such as, but not limited to, trafficking. For child care assistance, “debtor” may include the current or former provider or current or former recipient of child care assistance. For Medicaid, “debtor” shall include any current or former Medicaid member, or the parents of a current or former Medicaid member who was under the age of 21 when the parents completed the application and had responsibility for reporting changes, who received services or benefits as a result of client or agency error or administrative overpayment or who owes a debt of unpaid premium payments for medical assistance.

“*Public assistance*” means family investment program, SNAP, Medicaid, state supplementary assistance, PROMISE JOBS, child care assistance, refugee cash assistance, and hawki program.

“*Repayment agreement*” means an agreement entered into voluntarily between the department and the debtor for the repayment of debts and detailed on a form issued by the department.

“*Written notification*” means the notification sent to a debtor by the department on a form issued by the department.

441—11.2(217) Establishment of claim.

11.2(1) *Accounts.* The department will maintain an account for each debt that has occurred containing the following information:

- a. A debtor name and account number.
- b. Program in which the debt occurred.
- c. Date the debt was discovered.
- d. Inclusive dates of the debt.
- e. Total dollar amount of each debt.
- f. Primary cause of the debt.
- g. Any transaction applied to this debt.

11.2(2) *Notice of debt.* A claim is established when the first written notice of the debt is issued to the household.

11.2(3) *Change in debt.* An additional written notification of debt will be issued if a change occurs in the amount or period of the debt.

11.2(4) *Collection action.* No collection action will be initiated on:

- a. A debt for which no notice of debt has been issued to the household.
- b. A debt that is in appeal status.
- c. A debt that is in suspended status due to an exception to policy.

441—11.3(217) Application of payment. Payment will be applied only to debts subject to collection pursuant to subrule 11.2(4).

11.3(1) *Application of payment to a single program area.*

a. If there is more than one debt in a program, payment will be applied:

- (1) First to all debts which have an agreement in chronological order of discovery, and
- (2) Then to debts which do not have an agreement in chronological order of discovery until all debts have been paid in full or the full payment amount has been exhausted.

b. For SNAP, payment will be applied first to all debts with an agreement and then to debts without an agreement. Within those two groupings, payment will be applied in the following order:

- (1) First to state-only debts in chronological order of discovery,
- (2) Then to intentional program violation (IPV) debts in chronological order of discovery,
- (3) Then to inadvertent household error (IHE) debts in chronological order of discovery, and
- (4) Then to agency error debts in chronological order of discovery.

11.3(2) *Application of payment to multiple program areas.* If there are debts in more than one program area of public assistance, payments received will be applied to those program areas as indicated by the mode of repayment (SNAP benefits, FIP benefits) or as indicated by the client at the time of payment.

11.3(3) *Application of undesignated cash payment.* If an undesignated cash payment is received, it will be applied to each program area proportionally based on the cumulative balance of all debts in all program areas combined.

441—11.4(217) Setoff against state income tax refund, rebate, or other state payments, including, for example, state employee wages.

11.4(1) *Criteria for setoff.*

a. A claim against a debtor may be made by the department for public assistance debts when:

- (1) A debtor has failed to negotiate a repayment agreement for that program area of public assistance, or

- (2) A repayment agreement is not current, and
- (3) The cumulative balance of the applicable debts in 11.4(1)“a”(1) and (2) exceeds \$50.

b. A claim against a debtor will not be made by the department for debts when:

- (1) The debt is in suspended status due to an exception to policy or is in an appeal status, or
- (2) The debt is being recovered through grant or benefit reduction.

11.4(2) *Frequency of submission.* The department will submit to the department of administrative services twice each month a list of those debtors who have a debt meeting the criteria in subrule 11.4(1).

11.4(3) *Pre-setoff notice.* The department will mail written notification to a debtor to inform the debtor of the amount the department intends to claim and apply to debts in each program when:

- a. The department is notified by the department of administrative services that the debtor is entitled to a state income tax refund, rebate, or other state payment;
- b. The department makes claim against the debtor.

11.4(4) *Method for division of joint payments.* When either spouse wishes to request a division of a jointly or commonly owned right to payment, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, the spouse's proportionate share of a jointly or commonly owned right to payment, as determined by the department of administrative services, shall be released by the department of administrative services unless:

- a. Other claims are made on that portion of the jointly or commonly owned right to payment, or
- b. That spouse was also a member of the same household and the spouse's income and resources were or should have been considered in the calculation of public assistance.

11.4(5) *Appeal rights.* When a debtor wishes to contest the claim of the department, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, a hearing will be granted pursuant to rules in 441—Chapter 7.

a. If the department is upheld in the final decision, the setoff process will continue and the refund, rebate, or other state payment will be applied to the appropriate delinquent debts.

b. If the department is reversed in the final decision, the debtor's refund, rebate, or other state payment shall be released to the debtor by the department of administrative services.

11.4(6) *Debt setoff.* If the department has not received a request for an appeal hearing or a request for division of a jointly or commonly owned right to payment within 15 days after the date the written notification is mailed, the department will notify a debtor of the final decision regarding the claim by mail.

11.4(7) *Application of setoff.* The department will apply any setoff received from the department of administrative services as a result of this rule to the debtor's debts as indicated on the written notification mailed to the debtor and in accordance with rule 441—11.3(217).

Any amount remaining after the setoff shall be released back to the individual.

441—11.5(234) Setoff against federal income tax refund or other federal payments, including, for example, federal employee wages.

11.5(1) *Criteria for setoff.*

a. Debtors not participating in SNAP shall be subject to collection action through the treasury offset program (TOP) which includes, but is not limited to, federal salary offset and federal tax refund offset.

(1) Debtors shall be referred to TOP if they are delinquent in repaying their SNAP debt and there is a claim or combination of claims with an unpaid balance which exceeds \$25.

(2) No claim which is less than three months old or more than ten years old as of January 31 of the offset year shall be referred. EXCEPTION: Claims which have had a final judgment entered are not subject to the ten-year time limit.

(3) Debtors are delinquent in repaying their SNAP debt if:

1. A repayment agreement has not been signed and 120 days have elapsed since the due date of the demand letter as defined in 441—subrule 65.21(4) minus any days the claim was not subject to collection action because of an appeal.

2. A repayment agreement has been signed but the debtor has failed to make the agreed-upon payments and has failed to make up the missed payments. The debtor shall be referred to TOP when

120 days have elapsed since the first of the month following the month that the debtor failed to make the agreed-upon payment and has not subsequently made up the missed payment.

b. A claim against an individual will not be referred to TOP by the department of inspections, appeals, and licensing (DIAL) for debts when:

- (1) The debt is in suspended status due to an exception to policy or is in an appeal status, or
- (2) The debt is being recovered through benefit reduction.

11.5(2) *Setoff under TOP.* DIAL shall, by December 1 of each year, submit a notification of liability for delinquent claims to the Department of the Treasury.

11.5(3) *Pre-setoff notice.* DIAL shall notify a debtor identifying the amount the department intends to refer to TOP for offset.

11.5(4) *Offset fee.* For each offset that the Treasury Department effects against an individual referred to TOP, Treasury will charge the individual a fee.

11.5(5) *Appeal rights.* When an individual wishes to contest the delinquent status of a claim as identified by DIAL, a written request shall be submitted to DIAL within 60 days of the date of the pre-offset notice. When the request is received within the 60-day limit, a review shall be granted.

DIAL shall determine if the claim is past due and legally enforceable and shall notify the individual in writing of the decision.

11.5(6) *Application of setoff.* DIAL shall apply any setoff received as a result of this rule to the individual's SNAP debts.

Any amount remaining after the setoff shall be released back to the individual.

These rules are intended to implement Iowa Code sections 217.34, 234.12, 239B.14, and 249A.5.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 13
“Program Evaluation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 234.12, 237A.12, 239B.4, 249A.4, and 514I.4

State or federal law(s) implemented by the rulemaking: Not applicable

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 13 defines HHS methods and procedures to review public assistance program eligibility determinations made by HHS staff. These quality control measures are designed to ensure HHS implements these programs in accordance with the Iowa Code and federal regulations and in an efficient and effective manner. HHS impacted programs include Supplemental Nutrition Assistance Program, Family Investment Program, Medical Assistance, and Child Care Assistance.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
None.
 - Classes of persons that will benefit from the proposed rulemaking:
Program recipients will benefit from quality control measures that ensure accuracy of eligibility determinations.

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

Identified Impacts*

| | SFY 2023 | SFY 2024 | SFY 2025 | SFY 2026 | SFY 2027 | Five-Year Total |
|------------------------|--------------|--------------|--------------|--------------|--------------|-----------------|
| Costs | | | | | | |
| HHS Implementation | -\$1,672,000 | -\$1,819,000 | -\$1,947,000 | -\$1,950,000 | -\$1,911,000 | -\$9,299,000 |
| Benefits | | | | | | |
| Improved HHS Services | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Increased Public Trust | Intangible | Intangible | Intangible | Intangible | Intangible | Intangible |
| Net Value | -\$1,672,000 | -\$1,819,000 | -\$1,947,000 | -\$1,950,000 | -\$1,911,000 | -\$9,299,000 |

*All monetary figures have been rounded to the nearest thousand.

- Qualitative description of impact:

Improved quality control measures for Iowans seeking these services.

3. Costs to the State:

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

HHS incurs personnel costs for those team members tasked with completing the quality control procedure. These costs are reflected in the figure above, labeled as “HHS Implementation.”

- Anticipated effect on state revenues:

Not applicable.

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

Though the cost-benefit analysis shows a negative financial outcome, quality control measures ensure publicly funded services are implemented as intended by the Iowa legislature and in compliance with state and federal regulations. Review findings also assist HHS in making quality improvements to the processes and procedures that support how HHS team members determine eligibility for public assistance programs. This leads to efficient and effective provision of public services and an increased public trust in HHS systems and programs.

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

No less costly or intrusive methods were identified.

6. Alternative methods considered by the agency:

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

Not applicable.

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

HHS is implementing the quality control program according to the parameters detailed in the Iowa Code and federal regulations.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

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

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

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
PROGRAM EVALUATION

441—13.1(234,239B,249A,514I) Definitions.

“*Active case*” means a case that was receiving assistance for the month of review.

“*Case record*” means the record used to establish a client's eligibility.

“*Client*” means a current or former applicant or recipient of the family investment program (FIP), Supplemental Nutrition Assistance Program (SNAP), child care assistance program, or medical assistance program.

“*Field investigation*” means a contact involving the public or other agencies to obtain information about the client's circumstances for the appropriate month of review.

“*Medical assistance programs*” means those programs funded by Medicaid or the Children's Health Insurance Program (CHIP).

“*Month of review*” means the specific calendar or fiscal month for which the assistance under review is received.

“*Negative case*” means a case that was terminated or denied assistance in the month of review.

“*Public assistance programs*” means those programs involving federal funds, i.e., family investment program (FIP), Supplemental Nutrition Assistance Program (SNAP), child care assistance program, and medical assistance program.

“*Random sample*” means a systematic (or every nth unit) sample drawn monthly for which each item in the universe has an equal probability of being selected. Sample size is determined by federal guidelines or state corrective action needs.

“*State policies*” means the rules and regulations used by the department to administer the family investment program (FIP), Supplemental Nutrition Assistance Program (SNAP), child care assistance program, and medical assistance program.

This rule is intended to implement Iowa Code sections 234.12, 239B.4, 249A.4 and 514I.4.

441—13.2(234,239B,249A,514I) Review of public assistance records by the department.

13.2(1) Authorized representatives of the department shall have the right to review case records to determine the following:

- a. If the client has provided complete, correct and accurate information to the department to be used in the determination of the assistance benefits.
- b. If the department has correctly administered the state policies in determination of assistance for the public assistance programs.
- c. Whether overpayments or underpayments have been made correctly to the public assistance client during the month of review.
- d. If there is indication of fraudulent practice or abuse of the public assistance programs by either the client or department.

13.2(2) All pertinent case records within the department may be used by the reviewer to assist in substantiating an accurate reflection as to the correctness of the assistance received by the client.

This rule is intended to implement Iowa Code sections 234.12, 239B.4, 249A.4 and 514I.4.

441—13.3(234,239B,249A,514I) Cases to be reviewed. Any active or negative public assistance case may be reviewed at any time at the discretion of the department to:

13.3(1) Ensure federal and state requirements for quality control are met.

13.3(2) Detect error prone case issues to assist in corrective action.

13.3(3) Maintain public assistance program integrity.

This rule is intended to implement Iowa Code sections 234.6, 234.12, 239B.4, 249A.4, and 514I.4.

441—13.4(234,239B,249A,514I) Notification of review. On positive case actions, clients will be notified, either orally or in writing, that their case has been selected for review when contact is required by federal guidelines, or when contact is allowed and additional information is required to complete the review. The client will be contacted in a negative case only if a discrepancy exists that cannot be resolved from the case record and contact is allowed by federal guidelines.

This rule is intended to implement Iowa Code sections 234.6, 234.12, 239B.4, 249A.4, and 514I.4.

441—13.5(234,239B,249A,514I) Review procedure. The department will select the appropriate method of conducting the review.

13.5(1) A random sampling of active and negative case actions will be used to determine the case records to be studied.

13.5(2) The case record will be analyzed for discrepancies and correct application of policies and procedures and will be used as the basis for a field investigation.

13.5(3) Client interviews are required as follows:

a. Personal interviews are required on all active SNAP reviews.

b. An appointment letter may be sent to the client by the department to schedule or confirm the appointment date, time and location.

c. Client contacts are only required in negative case reviews when there is a discrepancy that cannot be resolved from the case record.

13.5(4) Collateral contacts are made whenever the client is unable to furnish information needed or the reviewer needs additional information to establish the correctness of eligibility and payment but only when allowed by federal guidelines. Verification to confirm the accuracy of statements or information may be obtained by documentary evidence or a contact with a third party.

a. The client shall release specific information whenever necessary to verify information essential to the determination of eligibility and payment.

b. Should the client refuse to authorize the department to contact an informant to verify information that is necessary for the completion of the review, collateral contacts will still be made through use of the general release statement contained in the financial support application or the review/recertification eligibility document.

This rule is intended to implement Iowa Code sections 234.6, 234.12, 239B.4, 249A.4, and 514I.4.

441—13.6(234) Failure to cooperate. Client cooperation with quality control is a program eligibility requirement as set forth in rule 441—65.3(234). When quality control determines that a client has refused to cooperate with the review process, the client is no longer eligible for the program benefits and will not be eligible for the program benefits until the client has cooperated.

This rule is intended to implement Iowa Code section 234.12.

441—13.7(234,239B,249A,514I) Report of findings. The quality control review findings are used by the department in the following ways:

13.7(1) To take the appropriate case action where an overpayment or underpayment has been found in a client's case record.

13.7(2) To identify error-prone program issues to be used in planning a department corrective action plan.

13.7(3) To determine the error rate used to establish state agency liability.

This rule is intended to implement Iowa Code sections 234.12, 239B.4, 249A.4, and 514I.4.

441—13.8(234,237A,239B,249A,514I) Federal review. A sample of cases may also be reviewed by the applicable federal agency to determine the correctness of the department's action or of the department's review of the case.

This rule is intended to implement Iowa Code sections 234.12, 237A.12, 239B.4, 249A.4, and 514I.4.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 122
“Fiscal Oversight of the Early Childhood Iowa Initiative”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256I
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 256I

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yyp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 122 sets forth oversight measures of HHS in relation to the Early Childhood Iowa area boards to ensure sound fiscal management of Early Childhood Iowa funds. HHS reviews internal controls managing disbursement of funding, approves and signs agreements between the area boards and the State, requires a regular audit of funds managed by each area board, and ensures area boards have liability insurance and a contract monitoring schedule for their funded programs.

Sound fiscal oversight of Early Childhood Iowa area boards works to ensure these boards operate optimally, allowing boards to successfully improve efficiency and effectiveness of early care services provided to families.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Early Childhood Iowa area boards will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Parents accessing early care services supported by an Early Childhood Iowa area board, communities utilizing an Early Childhood Iowa board to improve the efficiency and effectiveness of early care services provided to families, and children served by such early care services will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

| | SFY 2023 | SFY 2024 | SFY 2025 | Three-Year Total |
|------------------------------|-------------|-------------|-------------|------------------|
| Costs | | | | |
| State Agency Implementation | \$371,000 | \$376,000 | \$417,000 | \$1,164,000 |
| Area Board Audits | \$14,000 | \$22,000 | \$15,000 | \$51,000 |
| Benefits | | | | |
| Increased Public Trust | Intangible | Intangible | Intangible | Intangible |
| Improved Early Care Services | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | -\$385,000 | -\$398,000 | -\$432,000 | -\$1,215,000 |

*All monetary figures have been rounded to the nearest thousand.

- Qualitative description of impact:

State agency team members provide ongoing technical assistance and oversight of each local board's operating procedures, the local board's contract audits, community needs assessment reviews and local designation meetings, and reviews of reports submitted within iowagrants.gov.

Local boards operate under sound fiscal policies, using programmatic data metrics aligned with their local investments, and pay for an annual official audit by a firm of their choice.

Early Childhood Iowa area boards must comply with fiscal oversight measures by reporting in IowaGrants via a midyear financial report, budget, and annual report with fiscal verification from their fiscal agent, including conducting regular financial audits of funds managed by the board.

3. Costs to the State:

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

HHS incurs personnel costs for team members to provide fiscal oversight of Early Childhood Iowa area boards; prior to FY 2024, these team members reported to the Department of Management. Costs to the state agency have included a range of 2.25 full-time equivalent (FTE) positions to 2.5 FTE positions, travel, and office space expenses across the fiscal years shown. These costs are reflected in the table above, labeled as "State Agency Implementation."

- Anticipated effect on state revenues:

No impact was identified.

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

The cost-benefit analysis above shows a known three-year total net value of -\$1,215,000, averaging \$405,000 per year, to oversee improved early care services in those areas covered by an Early Childhood Iowa area board. Eliminating fiscal oversight measures as defined in this chapter may diminish the quality of operations of area boards, thus impacting the area board's ability to improve early care services to the same degree the board might when operating under sound fiscal practices. An area board using funds fraudulently or in contradiction to the requirements of the Iowa Code may diminish public trust in the Early Childhood Iowa program and HHS.

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

A less costly method has not been identified to achieve the purpose of this chapter.

6. Alternative methods considered by the agency:

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

HHS implements fiscal oversight of the Early Childhood Iowa area boards in accordance with requirements of the Iowa Code. This chapter does not ascribe department duties or implementation elements in addition to those directly defined in the Iowa Code.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
Not applicable.

Small Business Impact

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

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

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

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 122 and adopt the following **new** chapter in lieu thereof:

CHAPTER 122 FISCAL OVERSIGHT OF THE EARLY CHILDHOOD IOWA INITIATIVE

441—122.1(256I) Definitions. For the purpose of these rules, the following definitions apply:

“*Agreement*” means a contract between the area boards, state board, department, and state agencies to which funding is allocated.

“*Audit*” means a financial review by area boards of early childhood Iowa funds. Area boards that receive federal funds shall complete an audit of the funds. The audit must be a single audit if the area board received a total of federal funds from all funding sources in excess of the threshold defined in 2 CFR 200.501(b) as amended to December 31, 2023. Area boards that are not required to conduct a single audit under 2 CFR 200.501(b) as amended to December 31, 2023, may coordinate with the fiscal agent to conduct the required audit. The audit requirements shall be found in the online toolkit available on the department website.

“*Early childhood Iowa area board*” or “*area board*” means the same as defined in Iowa Code section 256I.1.

“*Early childhood Iowa state board*” or “*state board*” means the same as defined in Iowa Code section 256I.1.

441—122.2(256I) Fiscal oversight.

122.2(1) In consultation with the state board, the department has adopted policies to oversee the fiscal responsibilities of area boards.

122.2(2) The department will:

- a. Review the internal controls of all disbursements of early childhood Iowa funding;
- b. Approve the process for issuing agreements with area boards;

- c.* Approve and sign all agreements between the area boards and the state for the purposes of Iowa Code chapter 256I;
 - d.* Develop a policy for the disbursement of funds;
 - e.* Require an audit, conducted by an independent agency, of the early childhood Iowa funds managed by area boards. The minimum requirements and frequency of audits for the area boards shall be determined and approved by the state board;
 - f.* Ensure that all area boards secure liability insurance;
 - g.* Require that area boards submit a contract-monitoring schedule for their funded programs.
- These rules are intended to implement Iowa Code sections 256I.1 through 256I.12.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 200
“Adoption Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 232.119

State or federal law(s) implemented by the rulemaking:

- Iowa Code chapter 600.
- Title IV-E of the Social Security Act (42 U.S.C. Sections 670 through 679b) provides for federal funding for foster care and adoption assistance.
 - The Howard Metzenbaum Multiethnic Placement Act of 1994 (MEPA), 42 U.S.C.A. 51151, as amended by the Interethnic Adoption Provision of 1996 (IEP).
 - Public Law 95-608, Indian Child Welfare Act of 1978, Policy Sec. 4(4), 101(a), (b), and (c), 102(a), 102(d), 103(a), 105(b), 201.
 - Public Law 96-272, Adoption Assistance and Child Welfare Act of 1980.
 - Public Law 100-294, Child Abuse Prevention, Adoption, and Family Services Act of 1988.
 - Public Law 105-89, Adoption and Safe Families Act of 1997 (ASFA), PL 108-145, the Adoption Promotion Act of 2003.
 - Public Law 109-239, Safe and Timely Interstate Placement of Foster Children Act of 2006.
 - Public Law 109-248, Adam Walsh Child Protection and Safety Act of 2006.
 - Public Law 109-288, Child and Family Services Improvement Act of 2006.
 - Public Law 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008.
 - Public Law 111-320, CAPTA Reauthorization Act of 2010.
 - Public Law 112-34, Child and Family Services Improvement and Innovation Act of 2011.
 - Public Law 113-183, Preventing Sex Trafficking and Strengthening Families Act of 2014.
 - Public Law 114-95, Every Student Succeeds Act of 2015.
 - Public Law 114-22, Justice for Victims of Trafficking Act of 2015.
 - Public Law 115-123, Bipartisan Budget Act of 2018 (also Family First Prevention Services Act).

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 200 structures adoption services to be provided by HHS to place eligible children in adoptive arrangements that are safe, high quality, and in the best interest of the child. HHS accepts

applications for adoption of children with special needs; application for adoption of a child without special needs is referred to a private child-placing agency, though exception may be made for relatives of children under the guardianship of HHS.

Applicants applying to HHS to adopt must participate in a preplacement assessment and home visit. A child will not be placed in an adoptive home until parental rights of the child’s birth parents have been terminated. Preference is given to placing children from the same birth family together. A relative or other adult with a significant relationship with the child is given priority consideration. Foster parents will be given consideration for a child in their care.

HHS conducts activities designed to prepare the family and the child to make the transition to adoptive placement, including conducting transitional visits between the adoptive family and the child before placement in the home. Additionally, HHS makes monthly supervision visits from the time the child is placed with the family until finalization of the adoption occurs. HHS will not release identifying information from sealed adoption records unless approved to do so by the Director for purposes of treatment or research.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
None were identified.
 - Classes of persons that will benefit from the proposed rulemaking:
Families seeking adoption and the children who will be adopted will benefit.

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

- Quantitative description of impact:
Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

| | SFY 2023 | SFY 2024 | SFY 2025 | SFY 2026 | SFY 2027 | Five-Year Total |
|--|-------------|-------------|-------------|-------------|-------------|-----------------|
| Costs | | | | | | |
| HHS Implementation | -\$123,000 | -\$131,000 | -\$136,000 | -\$138,000 | -\$142,000 | -\$670,000 |
| Benefits | | | | | | |
| Improved Outcomes for Adopted Children | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | -\$123,000 | -\$131,000 | -\$136,000 | -\$138,000 | -\$142,000 | -\$670,000 |

*All monetary figures have been rounded to the nearest thousand.

Improved outcomes are realized when children experience timely, stable, and permanent adoptive placements. Per federal regulation, this is measured through timely adoption within 24 months of removal. In 2022, 58 percent of children served by HHS seeking adoptive placement met this metric. This is up from 50 percent in 2018.

- Qualitative description of impact:

Permanency in the form of adoption is important for children to develop healthy secure relationships and serves to reduce the potential stressors that arise from being displaced multiple times. Youth who experience minimized placement changes are more likely to experience fewer school changes, less trauma and distress, decreased mental health complications, less behavioral problems, increased probabilities for academic achievement, and a lasting positive relationship with an adult.

3. Costs to the State:

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

HHS incurs personnel costs for team members to support the adoption program. These costs are reflected in the figure above, labeled as “HHS Implementation.” Other service delivery costs incurred by the adoption program are reflected in the cost-benefit analysis for 441—Chapters 203 and 204 and are not reflected here.

- Anticipated effect on state revenues:
Not applicable.

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

The cost-benefit analysis above shows a net value of -\$670,000 over the five years studied and improved outcomes for children in adoptive care. Eliminating adoption services provided by HHS is likely to reduce the number of adoptive arrangements available to qualified children seeking adoption. Without the assessment and home visit services detailed in this chapter, adoptive relationships may be more likely to fail. A lack of available, quality, and adoptive relationships increases the likelihood of adverse impact to the child.

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

No less costly or intrusive methods exist.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
Not applicable.

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

HHS implements adoption services in accordance with requirements of the Iowa Code and federal regulations; overall, HHS implements the program as directed and has little flexibility in determining program elements. Activity under this chapter seeks to place eligible children under the guardianship of HHS in adoptive arrangements that are safe, high quality, and in the best interest of the child. The pre- and postadoption services offered to the child and adoptive family under this chapter reinforce and ensure stable and safe placements. A less intrusive method has not been identified to achieve the purpose of this chapter.

Small Business Impact

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

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

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

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 200 and adopt the following new chapter in lieu thereof:

TITLE XVI
ALTERNATIVE LIVING
CHAPTER 200
ADOPTION SERVICES

441—200.1(600) Definitions.

“Adoption” means a legal and social process through which a child becomes a member of a family into which the child was not born. Adoption provides the child the same rights, privileges and duties as a birth child.

“Adoption selection” means the process of making adoption placement decisions. The adoption selection committee team, tasked with making the final adoption placement decision, is made up of department of health and human service professionals. These professionals are brought together to review the child(ren)’s needs and the family’s abilities to meet those needs, to make the best adoption match available and to ensure compliance with applicable adoption laws.

“Adoption selection committee team” means department staff members designated to assist in the adoption selection process. The adoption selection committee team consists of the adoption supervisor and a minimum of two adoption workers. The social work administrator (SWA) may elect to be part of the team if there is more than one family seeking to adopt the child and the SWA may select additional department staff to serve as members of the team on a case-by-case basis.

“Adoption service” means a service directed towards children who are legally available for adoption, the birth family, prospective adoptive family, and adoptive family.

“Adoptive family” means an approved person or persons who have a child placed in their home and are being supervised prior to finalizing the adoption; or who have a child in their home who is legally adopted and entitled to the same benefits as a child born into the family.

“Adoptive home study” includes an assessment of the family’s parental attributes and a written report stating approval or nonapproval of the family for adoptive placement of a child or children.

“Child study” includes a written description of the child including strengths and needs; medical, mental, social, educational, placement and court history; a description of the child’s relationships with the birth family, foster family, and significant others; a summary of the child’s understanding and feeling about adoption and recommendations as to the type of family that can best meet the child’s needs.

“Child with special needs” means a child who meets one or more of the criteria set forth at 441—subrule 201.3(1).

“Court-ordered studies” means home studies ordered by a judge for the purpose of determining custody of a child or placement of a child for the purpose of adoption.

“Department” means the Iowa department of health and human services and includes the local offices of the department.

“Family-centered services” means services and other support intended to safely maintain a child with the child’s family or with an adult relative, to safely and in a timely manner return a child to the home of the child’s parent or relative, or to promote achievement of concurrent planning goals by identifying and helping the child secure placement for adoption, with a guardian, or with other alternative permanent family connections. Family-centered services include services adapted to the individual needs of a family regarding the specific services and other support provided to the child’s family and the intensity and duration of service delivery and services intended to preserve a child’s connections to the child’s neighborhood, community, and family and to improve the overall capacity of the child’s family to provide for the needs of the children in the family.

“Foster family adoption” means the adoption of a child by a licensed foster family who has cared for the child.

“Guardianship record” means a case record regarding a child, established and retained by the department, when the department is named guardian of the child by court order. The purpose of the

guardianship record is to collect and maintain information about the child and the birth family, legal documents, and other information that will assist in fulfilling the responsibility of guardian.

“Life book” means a compilation of information about the child, including birth information, photographs of the child; placement history, including dates of placement, names of caretakers, reasons for leaving the placement; relationships; school reports; social, medical, mental health developmental history; awards received, important events, letters from significant persons, and other information that the child wishes to include. The life book will assist the child in dealing with separation and loss issues and provide background and genealogy data.

“Placement services” includes the activities and travel necessary to plan and carry out the placement of a child or children into the adoptive family.

“Postadoption services” includes those services that an adoptive family may access after the adoption is finalized to assist the family in coping with and resolving problems within the family.

“Postplacement services” includes the supervision, support and intervention necessary prior to finalization to assist in maintaining the adoptive placement.

“Preadoptive family” means an approved adoptive family with a child placed in the home for adoption whose adoption has not been finalized.

“Preparation of child” includes activities necessary to ready the child for placement into an adoptive family.

“Preparation of family” includes the activities necessary to assist the family in adding an adoptive child as a new member of their family.

“Preplacement visits” means contacts, activities, and visits between the child and adoptive family prior to the adoptive placement.

“Procedendo” means an order issued by the Iowa Supreme Court returning jurisdiction to the district court after a final appellate decision regarding an appeal.

“Recruitment and retention contractor” or *“contractor”* means the entity that contracts with the department statewide to recruit foster and adoptive parents, complete home studies, and perform activities to support and encourage retention of foster and adoptive parents, or any of its subcontractors.

“Relative” means an individual related to a child within the fourth degree of consanguinity or affinity, by marriage, or through adoption.

“Selection of family” means reviewing approved home studies to match a family’s strengths with a specific child’s needs.

441—200.2(600) Application. Persons wishing to apply to adopt a child through the department shall complete an Application for Adoption form. An application for adoption shall only be accepted for children who are under the guardianship of the department.

200.2(1) Limitations. The department and its contractor shall accept only applications for adoption of a special needs child. The department shall refer adoption applications for children without special needs to private child-placing agencies. Exceptions to this rule may be made for:

- a. Relatives of a child under the guardianship of the department; or
- b. Foster parents with whom the child has a significant relationship.

200.2(2) Procedures. Before a home study is completed, applicants shall:

- a. Complete the Application for Adoption form, and
- b. Ensure that the Physician’s Report for Foster and Adoptive Parents form is completed by the applicant’s family physician.

441—200.3(600) Adoption services. Adoption services shall include: adoptive home study, preparation of child, selection of family, preparation of family, preplacement visits, placement services, and postplacement services.

200.3(1) Adoptive home study. For applicants who apply to the department to adopt, the contractor shall prepare an adoptive home study through the following activities:

- a. *Family assessment.* The family assessment shall include a minimum of two face-to-face interviews with the applicants and at least one face-to-face interview with each member of the

household. At least one of the interviews shall take place at the applicant's home. The assessment of the prospective adoptive family shall include an evaluation of the family's ability to parent a special needs child or children including the following:

- (1) Motivation for adoption and whether the family has biological children, adopted children or children in foster care currently placed in the home.
- (2) Family's and extended family's attitude toward accepting an adopted child and plans for discussing adoption with the child.
- (3) The attitude toward adoption of other people involved with the family in a significant way.
- (4) Emotional maturity; marital history, including verification of marriages and divorces; assessment of marital relationship; and compatibility of the adoptive parents.
- (5) Ability to cope with problems, stress, frustrations, crises, separation, and loss.
- (6) Medical, mental, and emotional conditions that may affect the applicant's ability to parent a child; treatment history; status of treatment; and the evaluation of the treatment. Applicants and all household members must disclose any past or current mental health or substance abuse issues, or both. The department may require further documentation, evaluation, or both, to determine the suitability of the home.
- (7) Willingness to accept a child who has medical problems (such as a child who is at risk for a communicable disease), intellectual disabilities, or emotional or behavioral problems. Ability to provide for the child's physical, medical, and emotional needs and commit to support a child's overall well-being.
- (8) Description of biological children and previously adopted children, if any, including their attitudes toward adoption, relationship with others, and school performance.
- (9) Capacity to give and receive affection.
- (10) Statements from three references provided by the family and additional references the contractor may wish to contact.
- (11) Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption.
- (12) Financial information, including the family's ability to provide for a child.
- (13) Disciplinary practices that will be used.
- (14) History of abuse involving family members, including how the abuse was addressed and how that history impacts the applicant's ability to be an adoptive parent.
- (15) Assessment of, commitment to, and capacity to maintain other significant relationships.
- (16) Recommendations for the number, age, sex, characteristics, and special needs of a child or children the family can best parent.
- (17) The family's ability to anticipate and understand the special needs of an adopted child as the child gets older and how the family will manage those needs.

b. Record checks. Record checks are required for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether any of those persons have founded child abuse reports, dependent adult abuse reports or criminal convictions or have been placed on the sex offender registry.

- (1) The records of the applicants shall be checked:
 1. On the Iowa central abuse registry using the Request for Child Abuse Information form;
 2. By the Iowa division of criminal investigation, using the HHS Criminal History Record Check Form B;
 3. On the Iowa sex offender registry;
 4. On the child abuse registry of any state where the applicant has lived during the five years prior to the issuance of the investigative report; and
 5. For a national criminal history through fingerprinting or another biometric identification-based process accepted by the federal government.
- (2) The records of persons aged 14 or older living in the home of the applicant shall be checked:
 1. On the Iowa central abuse registry using the Request for Child Abuse Information form;
 2. By the Iowa division of criminal investigation, using the HHS Criminal History Record Check Form B; and

3. On the Iowa sex offender registry.

(3) Out-of-state child abuse checks, dependent adult abuse checks and national criminal history checks may be completed on any adult living in the home of the applicant if the department has reason to do so.

(4) The department shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2)“b.”

(5) The department shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in a state other than Iowa that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2)“b.”

c. Evaluation of record.

(1) If the applicant or anyone living in the home has a record of founded child abuse, dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the applicant shall not be approved to adopt unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

(2) The evaluation shall be conducted according to procedures in 441—subrules 113.13(2) and 113.13(3) for applications for adoption through the department or procedures in 441—paragraph 108.9(4)“e” for applications for adoption through a child-placing agency.

d. Written report. The contractor shall prepare a written report of the family assessment, known as the adoptive home study, which shall be used to make recommendations on appropriate placement.

(1) The department shall notify the family of the decision using the Adoption Notice of Decision form.

(2) If the department does not approve the home study, the reasons shall be stated on the notice.

(3) The department shall provide the family a copy of the adoptive home study with the notification of approval or denial.

e. Preplacement assessment and home study update. A preplacement assessment and home study update is required if the adoptive home study was written more than two years previously, in accordance with Iowa Code section 600.8. The preplacement assessment and home study update shall be conducted by completion of the following:

(1) The child abuse, dependent adult abuse and criminal record checks shall be repeated, except for fingerprinting. If there are any founded abuses or convictions of crimes that were not evaluated in the previous home study, they shall be evaluated using the process set forth in paragraph 200.4(1)“c.”

(2) One face-to-face visit shall be conducted with the approved adoptive family.

(3) The information in the approved adoptive home study shall be reassessed.

(4) An updated written report of the reassessment and adoptive home study shall be written, dated, signed by the worker and supervisor for the contractor, and a copy provided to the adoptive family.

(5) Families who are dually licensed to provide foster family care shall have their adoption approval date align with their foster home licensing date.

f. Procedure for foster parent adoptions. When a licensed foster parent applies for approval as an adoptive home, home study activities that have been completed within the previous year as part of a licensing study pursuant to 441—Chapter 113 need not be repeated.

g. Annual visits to the adoptive family home. The contractor shall complete a minimum of one visit each year in the homes of families approved to adopt.

(1) The visit shall not be waived.

(2) When a person aged 14 or older moves into the home, the agency shall perform checks on the Iowa central abuse registry, by the division of criminal investigation, and on the sex offender registry. The record check evaluation process shall be completed if the person has a criminal conviction or founded abuse report or is on the sex offender registry.

(3) Findings and observations of the visit shall be documented and provided to the department when the update is submitted.

(4) The department shall be notified within 30 days of any deficiencies noted or other concerns discovered that require corrective action.

200.3(2) Preparation of child. The department shall conduct specific activities designed to enable a child to make the transition to an adoptive placement or refer the child to the family-centered services contractor or other professionals. The activities shall include, but not be limited to:

a. Counseling regarding issues of separation, loss, grief, guilt, anger and adjustment to an adoptive family.

b. Assisting in the preparation or update of a life book.

c. Provision of age-appropriate information regarding community resources available, such as children's support groups, to assist the child in the transition and integration into the adoptive family.

d. Any appropriate evaluations or testing.

200.3(3) Adoption selection process. When the department is appointed guardian of a child(ren) following the termination of parental rights, the department has both the duty and the authority to select an adoptive placement for that child(ren). To fulfill this duty, the department must hold a conference during which the department selects an adoptive family for an identified child(ren). At the conference, known as an adoption selection staffing, each interested family with an approved adoption or interstate compact home study will be considered. The adoption selection committee will determine which family will be able to best meet the needs of the child(ren) going forward. The adoption selection process will value the best interest of the child(ren) above all else.

a. The selection committee will consider placement priority as outlined in Iowa Code section 232.117 and will consider the following:

(1) The adoptive family selected for a child or sibling group must be based on a thorough assessment of each child's current and potential developmental, medical, emotional, and educational needs.

(2) The child(ren)'s need for family connections will be prioritized. Separation of siblings should be avoided. When separation is necessary to protect the safety and well-being of one or more children in the sibling group, all reasonable efforts must be made to select a placement likely to maintain contact between siblings if such contact is in the best interests of each sibling.

(3) The adoptive family selected will be able to nurture and accept the child(ren) as a fully integrated member(s) of the family.

(4) Race, color, or national origin may not be considered in placement selections except when an Indian child is being placed pursuant to Iowa Code section 232.7 or chapter 232B.

(5) Placement decisions shall be made consistent with the best interests and special needs of the child, including the adoptive family's capacity and commitment to holistically supporting the child's development and well-being.

(6) A relative who is within the fourth degree of consanguinity shall be given consideration for selection as the adoptive family for a child who is legally available for adoption if the child has a significant relationship with the relative or the child is aged 14 or older and elects adoption by the relative.

(7) Foster parents shall be given consideration for selection as the adoptive family for a child in the foster parents' care who is legally available for adoption if the child has been in the foster parents' care for six months or longer or the child has a significant relationship with the family.

b. The adoption selection committee team should strive to complete the adoption selection process in 60 days or less absent special circumstances.

c. Upon reaching a decision, the adoption selection committee team staff will notify families of the decision made by the adoption selection committee team and will send placement notification to the family not selected within two business days of the date all parties were initially notified, using the Adoption Notice of Decision form.

d. The selection of an adoptive family is not an appealable issue since a child continues to be under the guardianship of the department until an adoption is finalized.

200.3(4) Preparation of family. The contractor and the department shall conduct activities designed to enhance the family's readiness to accept the child or children into the family and strengthen the family's

commitment to adopt. A referral may be made for family-centered services if needed. The activities shall include, but not be limited to:

a. Completion of required preservice training and the self-study course, “Universal Precautions in Foster and Adoptive Family Homes,” before placement of a child. These training requirements apply to families who are adopting special needs children who are under the guardianship of the department.

(1) Relatives who have cared for a related child for at least six months and who have been selected to adopt that related child may have their participation in the preservice training waived by the service area manager or designee.

(2) The department may waive the preservice training requirement in whole or in part when the department finds that:

1. The applicant has completed relevant training or has a combination of relevant training and experience that is an acceptable equivalent to all or a portion of the required preservice training; or

2. There is good cause for the waiver based upon the circumstances of the child and the applicant.

(3) Applicants must retake the preservice training if the adoption approval process is not completed within 24 months after the preservice training is initially completed.

b. Discussion with family members regarding problems resulting from a child’s separation, loss, grief, and anger due to the loss of the birth parents.

c. Provision of background information on the child and birth family, including a child study that includes experiences such as foster and adoption placements and other pertinent information and the child’s life book.

d. Provision of information regarding the child’s special needs and behavior patterns.

e. Provision of a description of the child’s medical needs, including whether or not the child has a communicable disease.

f. Discussion of the impact that adding a new member or members to the family may have on all current family members.

g. Explanation of the state’s subsidized adoption program.

h. Provision of information regarding the community resources that are available to assist the family, such as parent support groups, community supports including Medicaid funded supports and post adoption supports.

200.3(5) *Preplacement visits.* The department shall plan, conduct and assess the transitional visits between the adoptive family and the child or children before the adoptive placement of the child in the home.

200.3(6) *Placement services.* Placement services include the activities necessary to plan and carry out the placement of a child or children into the adoptive family.

Before placement of a child, the Agreement of Placement for Adoption form shall be signed by all parties.

200.3(7) *Postplacement services.* An adoptive family is eligible for postplacement services from the time a child is placed with the family until finalization of the adoption occurs. The department shall supervise the placement, provide ongoing support to the child and family, perform crisis intervention, and complete required reports. Assistance with behavioral interventions to strengthen the placement and prevent disruption may be provided through family-centered services.

a. Postplacement supervision shall focus on the following areas:

(1) Integration and interaction of the child or children with the family.

(2) Changes in the family functioning which may be due to the child’s placement.

(3) Social and emotional adjustment of the child or children.

(4) Child’s growth and development since placement with the adoptive family.

(5) Changes and adjustments that have been made in the family since the child’s placement.

(6) Family’s method of dealing with testing behaviors and discipline.

(7) Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.

(8) School adjustment of a child who is attending a school.

(9) The behavioral needs of the child.

(10) The psychological and mental health needs of the child.

(11) Services and supports that will assist the child and family in the future.

b. At a minimum, the department shall make monthly home visits until the adoption is final. If the family is experiencing problems, the department shall make as many visits as are necessary to assess and support the placement.

c. The department shall prepare a written report based on the postplacement visits with recommendations regarding the finalization of the adoption and submit the report to the court before the hearing to consider granting a decree of adoption.

200.3(8) *Postadoption services.* The department's contractor shall provide postadoption services to families that are eligible for the department's adoption subsidy program in accordance with the contract. The goal of these services is to prevent adoption dissolution. The family may obtain additional support through community resources or support groups.

441—200.4(600) Termination of parental rights. The department shall not place a child in an approved adoptive home until parental rights of the child's birth parents have been terminated and guardianship assigned to the department. This would not apply to families and children participating in tribal customary adoption. If one or both birth parents are deceased, the worker shall provide the court with verification of the birth parents' death and the death shall be stated in the guardianship order. When the termination of parental rights is appealed by a birth parent, an adoptive placement may be made if the adoptive parents sign an adoptive placement agreement that includes an acknowledgment of the conditions of the placement should termination be overturned. However, the adoption may not be finalized until the appeal is withdrawn or a final decision regarding the appeal is reached and a procedendo issued.

441—200.5(600) Interstate placements. Interstate placement of a child into Iowa, or out of Iowa, shall follow interstate placement of child procedures in accordance with Iowa Code sections 232.158 through 232.166.

441—200.6(600) Requests for home studies.

200.6(1) *Court-ordered.* Court-ordered home studies for adoption of a child or children under the authority of the department shall be completed by the department's contractor.

200.6(2) *Interstate compact.* Requests for an adoptive home study through the interstate compact process shall be completed by the department's contractor.

441—200.7(600) Reasons for denial.

200.7(1) An individual or family shall be denied approval of an adoptive home study for any of the following reasons unless an evaluation determines that denial is improper:

a. Founded child abuse report or dependent adult abuse report.

b. Criminal conviction.

c. Documented concerns. Concerns may be documented in one or more of the following areas:

(1) Motivation to adopt.

(2) Child-rearing ability and practices.

(3) Emotional stability.

(4) Physical or mental health.

(5) Interpersonal relationships.

(6) Finances.

(7) Marital relationship.

(8) Other areas that may impact the applicant's ability to meet the needs of a child both at present and in the future.

d. Substance abuse. Verified substance use or abuse that prevents the family from adequately caring for the child shall mean denial of approval.

e. Lack of cooperation. If the individual or family fails to cooperate in providing the information needed to complete the preplacement assessment or home study, the application shall be denied.

200.7(2) Prospective adoptive families may appeal denial of approval of their home study.

441—200.8(600) Removal of child from preadoptive family. When the department determines that it is in the child's best interest to be removed from a preadoptive family, a Letter of Removal form shall be mailed to the family prior to removal. Removal of a child from a preadoptive family is not an appealable action.

441—200.9(600) Consents. A request for consent to the adoption shall be submitted to the guardian for a child who is under the guardianship of the department and for whom finalizing an adoption is recommended. If the adoption is in the best interest of the child, the department shall sign a Consent to Adoption form, prior to a court hearing finalizing the adoption.

A consent to adopt may be rescinded by the department, by signing a Rescinding the Consent to Adoption form for any of the following reasons:

1. At the request of the adoptive family.
2. A founded child abuse report, dependent adult abuse report, accusation of child abuse, or dependent adult abuse pending determination of the report.
3. Conviction of a crime, or accusation of a crime, pending a court decision regarding the crime.
4. At the request of a child who is aged 14 or over and has reversed the decision regarding the adoption.
5. Other verified indications that the adoption is not in the best interest of the child.

441—200.10(600) Requests for access to information for research or treatment.

200.10(1) Requests. Any person seeking access to the department's sealed adoption records for the purpose or purposes set forth in Iowa Code section 600.16(1) "c" or Iowa Code section 600.24(2) shall submit a request in writing to the department. Each request shall contain sufficient facts to establish that the information sought is necessary for conducting a legitimate medical research project, or for treating a patient in a medical facility.

200.10(2) Process. Upon receipt of a request for information sought in conducting a research project, the director or a designee shall review the request for information and make a decision to approve, or deny, the request based on the research to be conducted, the benefits of the research, the methodology, and the confidentiality measures to be followed. Upon a request for information for treating a patient in a medical facility, a decision regarding approval or denial shall be made by the director or designee based on the written information provided by a physician or the medical facility making the request. A requester shall be notified in writing of approval or denial and, if denied, reasons for denial given.

441—200.11(600) Requests for information for purposes other than research or treatment. Requests for information from department adoption records for purposes other than research or treatment shall be made on the department's website.

200.11(1) The department shall not release identifying information from sealed adoption records. Adult adoptees, adoptive parents, birth parents, siblings or descendants of an adopted person, or legal representatives of any of the above shall be provided:

- a.* An adoption packet containing a sample affidavit for filing with the court,
- b.* Directions for filing the affidavit,
- c.* A list of county clerks of court,
- d.* The address of the bureau of vital statistics, and
- e.* Instructions on how to obtain the name of the Iowa county where the adoption was finalized, if necessary.

200.11(2) An adopted person who was a resident of the Annie Wittenmyer Home (Iowa Soldier's and Sailor's Home) may receive nonidentifying information from Annie Wittenmyer records if the information is available.

These rules are intended to implement Iowa Code chapter 600.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 201
“Subsidized Adoptions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 600.17 through 600.23

State or federal law(s) implemented by the rulemaking:

- Iowa Code sections 600.17 through 600.23.
- Title IV-E of the Social Security Act (42 U.S.C. Sections 670 through 679b) providing for federal funding for foster care and adoption assistance.
- The Howard Metzenbaum Multiethnic Placement Act of 1994 (MEPA), 42 U.S.C. 51151, as amended by the Interethnic Adoption Provision of 1996 (IEP)
- Public Law, 95-608, Indian Child Welfare Act of 1978, Policy Sec. 4(4), 101(a), (b), and (c), 102(a), 102(d), 103(a), 105(b), 201.
- Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980.
- Public Law 100-294, the Child Abuse Prevention, Adoption, and Family Services Act of 1988.
- Public Law 105-89, the Adoption and Safe Families Act of 1997 (ASFA), PL 108-145, the Adoption Promotion Act of 2003.
- Public Law 109-239, the Safe and Timely Interstate Placement of Foster Children Act of 2006.
- Public Law 109-248, Adam Walsh Child Protection and Safety Act of 2006.
- Public Law 109-288, Child and Family Services Improvement Act of 2006.
- Public Law 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008.
- Public Law 111-320, CAPTA Reauthorization Act of 2010.
- Public Law 112-34, Child and Family Services Improvement and Innovation Act of 2011.
- Public Law 113-183, Preventing Sex Trafficking and Strengthening Families Act of 2014.
- Public Law 114-95, Every Student Succeeds Act of 2015.
- Public Law 114-22, Justice for Victims of Trafficking Act of 2015.
- Public Law 115-123, Bipartisan Budget Act of 2018 (also Family First Prevention Services Act).

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 201 seeks to increase access to adoptive arrangements for children with special needs, older children, and children otherwise hard to place in an adoptive home by implementing a

subsidized adoption program. This program provides financial assistance to interested adoptive parents capable of providing suitable care but lacking in necessary economic resources.

To be eligible, a child under the guardianship of HHS must have been determined by a qualified health care professional to have met the definition of special needs included in this chapter, or be aged five or over, or be a member of a sibling group of three or more children who are placed in the same adoptive home. A child in the guardianship of a licensed child-placing agency may be eligible for subsidy if the child is eligible to receive Supplemental Security Income (SSI) based on a diagnosed disability or if the child has received a federally funded adoption subsidy in a prior adoption.

Subsidy payments to approved adoptive parents may include:

- Special Services Assistance: Compensation for medical, dental, therapeutic, educational, or other similar service or appliance required by an adopted child by reason of a disability.
- Monthly Maintenance Assistance: Monthly payment to assist with room, board, clothing, and spending money. The maximum monthly payment rate is pursuant to the foster family care maintenance rates.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Not applicable.
 - Classes of persons that will benefit from the proposed rulemaking:
Adoptive parents of eligible children.
Children in a subsidized adoption.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

| | SFY 2018 | SFY 2019 | SFY 2020 | SFY 2021 | SFY 2022 | Five-Year Total |
|--|---------------|---------------|---------------|---------------|---------------|-----------------|
| Costs | | | | | | |
| Adoption Subsidy Payment | -\$75,241,000 | -\$75,736,000 | -\$77,291,000 | -\$77,957,000 | -\$77,680,000 | -\$383,905,000 |
| Benefits | | | | | | |
| Federal Title IV-E Funding | \$35,369,000 | \$37,093,000 | \$41,359,000 | \$44,998,000 | \$45,726,000 | \$204,545,000 |
| Improved Outcomes for Adopted Children | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | -\$39,872,000 | -\$38,643,000 | -\$35,932,000 | -\$32,959,000 | -\$31,954,000 | -\$179,360,000 |

*All monetary figures have been rounded to the nearest thousand.

- Qualitative description of impact:

The amount of subsidy is negotiated between HHS and the qualified adoptive parent(s) based on the needs of the child and circumstances of the adoptive family. In SFY 2022, 10,600 children received an adoption subsidy payment. This chapter requires that other services available to meet the needs of an eligible child that are free of charge be explored and used prior to spending subsidy funds.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

Any implementation costs incurred by HHS for operation of the adoption program are reflected in the cost-benefit analysis in the Regulatory Analysis for 441—Chapter 200 (IAB 11/1/23) and are not reflected here.

Federal funds received through the Title IV-E Federal Payments for Adoption Assistance Program are used to assist in funding subsidized adoptions. The federal participation rate varies; in SFY 2022, Iowa's participation rate was 86.26 percent. This is up from 80.88 percent in SFY 2018. These funds are reflected in the figure above, labeled as "Federal Title IV-E Funding."

- Anticipated effect on state revenues:

Subsidy payments are provided out of Federal Title IV-E of the Social Security Act funds as well as state-appropriated funds for the use of adoption subsidy payments. These costs are reflected in the figure above, labeled as "Adoption Subsidy Payments." Subsidy payments are a combination of both the federal and state funding sources.

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

The cost-benefit analysis above shows a net value of \$31,954,000 and improved outcomes for children in subsidized adoptive care. Eliminating the subsidy is likely to reduce the number of guardianship arrangements available to children in need, which has the potential to shift children eligible for guardianship into more restrictive care arrangements, thus increasing the likelihood of adverse impact on the child. Additionally, more restrictive care arrangements could result in the State paying more for care of an eligible child than would be paid in the form of a subsidy under this chapter.

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

Activity under this chapter seeks to increase access to adoptive arrangements for eligible children through use of a subsidy. Subsidy rates are set at an equivalent value to what a family would receive to provide family foster care. These subsidies encourage the adoption of children from Iowa's foster care system and minimize financial obstacles to adoption. Reducing this rate would likely result in fewer children being adopted into permanent families. A consequence of fewer adoptions could be additional financial and capacity burdens to Iowa's foster care system. To limit the impact on state revenues, the chapter requires that other services available to meet the needs of an eligible child that are free of charge be explored and used prior to spending subsidy funds.

6. Alternative methods considered by the agency:

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

HHS implements the subsidy program in accordance with requirements of the Iowa Code and federal regulations. HHS follows both the federal and state requirements and guidelines in this chapter

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

Not applicable.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 201 and adopt the following **new** chapter in lieu thereof:

CHAPTER 201
SUBSIDIZED ADOPTIONS

441—201.1(600) Administration. The department shall administer the subsidized adoption program, in conformance with the legal requirements for adoption.

441—201.2(600) Definitions.

“*Child*” means a person who has not attained age 18, or a person with a physical or mental disability who has not attained age 21.

“*Escrow account*” means an interest-bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

“*Maintenance subsidy*” means a monthly payment to assist the family in meeting the living expenses and expenses related to the care of a child with special needs in covering the cost of room, board, clothing, and spending money. The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

“*Nonrecurring expenses*” means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs. These shall be limited to attorney fees, court filing fees and other court costs.

“*Physician*” means a licensed medical or osteopathic doctor as defined in rule 441—77.1(249A).

“*Presubsidy*” means payment for maintenance or special services for a child with special needs who is placed in an adoptive home and who meets all eligibility criteria for maintenance subsidy but whose adoption is not finalized.

“*Qualified intellectual disability professional*” means a person who has at least one year of experience working directly with persons with an intellectual disability or other developmental disabilities and who is one of the following:

1. A doctor of medicine or osteopathy.
2. A registered nurse.
3. A person who holds at least a bachelor’s degree in a human services field including, but not limited to, social work, sociology, special education, rehabilitation counseling, or psychology.

“*Qualified mental health professional*” means a person who meets all the following conditions:

1. Holds a master’s degree in a mental health field including, but not limited to, psychology, counseling and guidance, or psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and

2. Holds a current Iowa license when required by the Iowa professional licensure laws for persons practicing as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker; and

3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and services needs and in providing mental health services.

“*Special services subsidy*” means payment to a provider or reimbursement to the parent for medical, dental, therapeutic, or other services, equipment or appliances required by a child to meet the child’s identified special needs.

441—201.3(600) Conditions of eligibility or ineligibility.

201.3(1) The child is eligible for subsidy when the department or a private agency has documented that it has been unable to place the child in an appropriate adoptive home without a subsidy and the child is determined to be a child with special needs based on one or more of the following reasons:

a. The child has a medically diagnosed disability, as determined by a physician, an advanced registered nurse practitioner or a physician assistant, which substantially limits one or more major life activities, requires ongoing professional treatment, impacts the child's ability to perform daily living skills, and is expected to last 12 months or longer.

b. The child has been determined by a qualified intellectual disability professional to be intellectually disabled.

c. The child has been determined by a qualified professional to be at high risk of developing a qualifying medical, mental, or emotional condition as defined in this subrule. A child in this group is eligible for subsidy of nonrecurring expenses only.

d. The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child requires ongoing professional services.

e. The child has been diagnosed by a qualified mental health professional to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with the child's intellectual, social and personal adjustment and which requires ongoing treatment.

f. The child is aged five or over.

g. The child is a member of a sibling group of three or more children who are placed in the same adoptive home.

201.3(2) A child who enters the United States from another country on the basis of a visa classifying the child as an orphan, in accordance with the Immigration and Naturalization Act as amended to December 31, 2023, for the purpose of adoption by a specific United States family is not eligible for subsidized adoption maintenance payments, medical assistance, or special services except for nonrecurring expenses.

201.3(3) Adverse eligibility determinations by the department may be appealed according to rules in 441—Chapter 7.

201.3(4) The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive subsidy to the age of 21 due to the child's physical, intellectual, or mental health disability.

a. The disability shall be diagnosed by a physician, a qualified mental health professional, or a qualified intellectual disability professional.

b. The diagnosis shall be current within one year prior to the child's eighteenth birthday.

c. The child's parents shall provide documentation of the child's disability.

441—201.4(600) Application. Application for presubsidy or subsidy for a child with special needs in the guardianship of the department shall be made at the time of the adoptive placement of the child, or at any time in the adoptive process before finalization of the adoption.

201.4(1) The prospective adoptive family residing in Iowa who has been studied and approved for adoptive placement or a family residing outside of the state of Iowa studied and approved by a governmental child-placing agency or a licensed child-placing agency in that state, may apply for subsidy for an eligible Iowa child.

201.4(2) Withdrawal of the subsidy application shall be reported to the department immediately.

201.4(3) The effective date for the Adoption Subsidy Agreement will be the date the agreement is signed by the adoptive parents and the department, which may be the date the child is placed in the adoptive home or any date up to and including the date the adoption is finalized. The agreement shall state the amount of the presubsidy or subsidy, the frequency and duration of payments and the conditions under which the agreement may be terminated.

201.4(4) An application for subsidy cannot be taken after the child is adopted except when there are facts relevant to a child's eligibility that were not presented before the finalizing of the adoption.

a. Upon receiving verification that the child was eligible before the child's adoption, the department may conduct an administrative review of the facts and may determine the child an eligible child with special needs. Eligibility will be effective after the Application for Subsidy is completed and the Adoption Subsidy Agreement form is signed by all parties.

b. Requests for determination after the adoption is finalized shall be forwarded with verification of eligibility to the department. The department shall conduct an administrative review of eligibility factors and render a written decision within 30 days of receipt of request and verification materials unless additional verification is requested. If additional verification is requested, a decision shall be reached within 30 days of receipt of additional verification materials.

201.4(5) A child in the guardianship of a licensed child-placing agency may be eligible for adoption subsidy when one of the following conditions is met:

- a.* The child receives or is eligible to receive SSI based on a diagnosed disability, or
- b.* The child received federally funded adoption subsidy in a prior adoption.

441—201.5(600) Negotiation of amount of presubsidy or subsidy.

201.5(1) The amount of presubsidy or subsidy shall be negotiated between the department and the adoptive parents and shall be based upon the needs of the child and the circumstances of the family.

a. Each time negotiations are completed, the Adoption Subsidy Agreement shall be completed.

b. The Adoption Subsidy Agreement shall be completed and retained in an inactive case record for future reference when:

(1) A child is eligible for subsidy but the child or family does not currently need assistance; or

(2) The child is at risk of being determined a child with special needs according to paragraph 201.3(1) "a," "b," "d," or "e" in the future.

201.5(2) Other services available to the family free of charge to meet the needs of the child, such as other federal, state, and local governmental and private assistance programs, shall be explored and used before the expenditure of subsidy funds.

Unearned income of the child shall be verified by documentation provided to the department worker by the family from the source of the income.

201.5(3) A maintenance subsidy may be no less than \$10 per month.

201.5(4) An adoptive family may request a review of the subsidy agreement when there is a change in the family's circumstances or the needs of the child.

201.5(5) Maintenance subsidy shall continue under the same rules if the adoptive family moves outside of the state of Iowa.

201.5(6) The maximum monthly maintenance payment for a child in subsidized adoption shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child as found at rule 441—156.6(234).

441—201.6(600) Types of subsidy.

201.6(1) *Special services only.*

a. Reimbursement to the family or direct payment to a provider may be made for the following special services needed to meet the needs of the child.

(1) Outpatient counseling or therapy services. Reimbursement for outpatient individual or family services may be provided from a non-Medicaid provider only with approval from the department and when one of the following applies:

1. The services are not available from a Medicaid provider within a reasonable distance from the family.

2. The child and the family were already receiving therapy or counseling from a non-Medicaid provider and it would not be in the child's best interest to disrupt the services.

3. Available Medicaid providers lack experience in working with foster, adoptive, or blended families.

Reimbursement to non-Medicaid providers shall be limited to the Medicaid rate.

(2) Expenses for transportation, lodging, or per diem related to preplacement visits, not to exceed \$2,000 per family.

(3) Medical services not covered by the Medicaid program when the child, either alone or with the family, resides outside the state of Iowa and that state's Medicaid does not cover a needed service, or a provider enrolled with Iowa Medicaid cannot be secured. An adoption subsidy payment shall not supplement the Medicaid payment rate to a Medicaid provider or a non-Medicaid provider.

(4) An additional premium amount as a result of adding the child to the family's health insurance group.

(5) Medical transportation, food and lodging not covered by Medicaid when the child is receiving specialized care in a facility 50 miles or farther from the family home, when the family is participating in services and to facilitate reunification with the child.

(6) Supplies and equipment as required by the child's special needs and unavailable through other resources.

1. When the siblings in a sibling group of three or more are placed together, a one-time-only payment can be made, not to exceed \$500 per child, to reimburse the family for expenses related to accommodating the needs of the sibling group.

2. When home modifications have been authorized to accommodate a child's special needs and the family later sells the house, the family shall repay the department an amount equal to the increase in the equity value of the home attributable to the modifications.

(7) Nonrecurring expenses. Payment for nonrecurring expenses is generally limited to a total of \$1,000 per child for attorney fees, court costs and other related legal expenses. Nonrecurring expenses may be paid when the adoptive family has negotiated an Adoption Subsidy Agreement, or an Agreement to Future Adoption Subsidy.

(8) Funeral benefits at the amount allowed for a foster child in accordance with 441—Chapter 156.

b. The need for special services shall be documented in the Adoption Subsidy Agreement. The family shall provide documentation of expenses to the department.

c. Any single special service and any special service delivered over a 12-month period costing \$500 or more shall have prior approval from the central office adoption program manager prior to expending program funds.

d. For all Medicaid covered services the department shall reimburse at the same rate and duration as Medicaid as set forth in rule 441—79.1(249A).

201.6(2) Maintenance only. A monthly payment to assist with room, board, clothing and spending money may be provided, as determined under rule 41—201(600). The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

201.6(3) Maintenance and special services. For children with special needs, a special services subsidy may also be included when a maintenance subsidy is provided.

441—201.7(600) Determination of ongoing subsidy eligibility and suspension of subsidy payments.

201.7(1) Eligibility for continuation of adoption subsidy shall be evaluated when the department has reasonable cause to suspect the adoptive parent is not providing financial support, or is no longer legally responsible for the child. This includes, but is not limited to, the following circumstances:

a. The child is placed in out-of-home care.

b. A person alleges the parents are not providing financial support to the child.

c. A person other than the parent is awarded legal custody of the child.

d. A person other than the parent is appointed as the guardian of the child.

e. The child has applied for food assistance or other benefits.

f. The child has not resided with the parent for the past 30 consecutive days.

g. The parent is incarcerated.

h. The parent is awaiting trial for criminal charges related to harm caused to a child in the home.

201.7(2) The department will contact the child's parents via letter, telephone, or electronic or other means and document such efforts.

201.7(3) The child's parents shall provide documentation of support, including receipts, to the department upon request.

201.7(4) Upon completion of the department's evaluation of the child's continued eligibility for adoption subsidy, the department will issue a written notice to the parents documenting required ongoing actions by the parents, including an expectation of continued cooperation by the parents to provide documentation of ongoing support to the child at the request of the department.

201.7(5) The department shall suspend adoption subsidy payments if the parents refuse to cooperate or if the department is unable to determine whether the parents are providing financial support or are legally responsible for the child.

201.7(6) Through a Notice of Decision, the department shall terminate the Adoption Subsidy Agreement upon a finding that the child is not being financially supported.

201.7(7) When the child has resided out of the parental home for 30 consecutive days, the department will request a renegotiation of the Adoption Subsidy Agreement with the parents to reduce or suspend payments as agreed to by the parents.

441—201.8(600) Termination of subsidy. Subsidy will terminate when any of the following occur:

201.8(1) The adoptive child no longer meets the definition of child in rule 441—201.1(600).

201.8(2) The child marries.

201.8(3) The adoptive parents are no longer using the maintenance payments to support the child.

201.8(4) Death of the child, or death of the parents of the child (one in a single-parent family and both in a two-parent family).

201.8(5) Upon conclusion of the terms of the agreement.

201.8(6) Upon request of the adoptive parents.

201.8(7) The adoptive parents are no longer legally responsible for the child.

201.8(8) The child enlists in the military.

441—201.9(600) Reinstatement of subsidy. Reinstatement of subsidy will be made when the subsidy was terminated because of reasons in subrule 201.8(3), 201.8(6), or 201.8(7) and the reason for termination no longer exists.

441—201.10(600) New application. New applications will be taken at any time, but processed only so long as funds are available. Maintenance and special services already approved will continue.

441—201.11(600) Medical assistance based on residency. Children with special needs eligible for any type of subsidy are entitled to medical assistance as defined in 441—Chapter 75. The funding source for medical assistance is based on the following criteria:

201.11(1) IV-E-eligible children:

a. IV-E-eligible children residing in Iowa from Iowa and from other states shall receive medical assistance from Iowa.

b. IV-E-eligible children from Iowa residing in another state shall receive medical assistance from the family's state of residence, even though medical assistance available in the family's state of residence may vary from Iowa's medical assistance.

201.11(2) Non-IV-E-eligible children:

a. Non-IV-E-eligible children from Iowa residing in Iowa shall be covered by Iowa's medical assistance.

b. Non-IV-E-eligible children from Iowa residing in another state shall be covered by Iowa's medical assistance unless eligible for benefits from the other state pursuant to a program funded under Title XIX of the federal Social Security Act as amended to December 31, 2023.

c. Non-IV-E-eligible children from another state residing in Iowa shall be covered by Iowa's medical assistance if all the following conditions are met:

(1) The child is under the age of 21.

(2) The child is residing in Iowa in a private home with the child's adoptive parent or parents.

(3) Another state is currently paying an adoption subsidy for the child pursuant to an adoption assistance agreement in effect for the child with that state.

(4) The state paying the adoption subsidy is a member of the interstate compact on adoption and medical assistance (ICAMA).

(5) The state paying the adoption subsidy provides medical assistance benefits pursuant to a program funded under Title XIX of the Social Security Act, under the optional group at Section 1902(a)(10)(A)(ii)(VIII) of the Act as amended to December 31, 2023, to children residing in that state (at least until age 18) for whom there is a state adoption assistance agreement in effect with the state of Iowa other than under Title IV-E of the Social Security Act.

201.11(3) When an Iowa child receives medical assistance from another state, Iowa shall discontinue paying any medical costs the month following the move unless additional time is necessary for a timely notice of decision to be provided to the family. An exception shall be made when the initial Iowa subsidy agreement provides for services not covered by the other states.

441—201.12(600) Presubsidy recovery. The department will recover the cost of presubsidy maintenance and special services provided by the department as follows:

201.12(1) Funds will be applied to the cost of presubsidy maintenance and special services from the unearned income of the child.

201.12(2) The department will serve as payee to receive the child's unearned income. The income will be placed in an account and be applied toward the cost of the child's current care with the remainder placed in an escrow account.

201.12(3) When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the presubsidy payments and not prohibited by the source of the funds.

201.12(4) When the child leaves presubsidy care, funds in the escrow shall be paid to the adoptive parents, or to the child if the child has attained the age of majority.

These rules are intended to implement Iowa Code sections 600.17 to 600.23.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 203
“Iowa Adoption Exchange”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 232.119
State or federal law(s) implemented by the rulemaking: Iowa Code section 232.119

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yyp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 203 seeks to increase access to adoptive arrangements by creating the Iowa Adoption Exchange, a streamlined system of matching children available for adoption with potential adoptive homes. Matches are managed through a computerized statewide exchange system.

Children under the guardianship of HHS for whom an adoptive home is not available are entered on the exchange within 60 or 90 days of receipt of termination of parental rights. Children under the guardianship of a licensed child-placing agency whose parental rights have been terminated may be registered on the exchange at any time. Approved families wishing to adopt are entered on the exchange by HHS or a licensed child-placing agency.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Not applicable.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa families and children seeking adoption will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

| | SFY 2018 | SFY 2019 | SFY 2020 | SFY 2021 | SFY 2022 | Five-Year Total |
|--|-------------|-------------|-------------|-------------|-------------|-----------------|
| Costs | None | None | None | None | None | None |
| Benefits | | | | | | |
| Improved Outcomes for Adopted Children | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

*All monetary figures have been rounded to the nearest dollar.

- Qualitative description of impact:

The Iowa Adoption Exchange seeks to find loving adoptive families for often the longest-waiting children in the foster care system. Over the last five state fiscal years, 5,400 adoptions have occurred out of Iowa's child welfare/foster care system, averaging over 1,000 each year. The exchange helps to support adoption finalization in Iowa.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
Not applicable.
- Anticipated effect on state revenues:
Not applicable.

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

The cost-benefit analysis above shows improved outcomes for children in adoptive care. Eliminating the exchange would likely reduce the number of adoptive arrangements available to qualified children seeking adoption. A lack of available adoptive relationships increases the likelihood of adverse impact to the child.

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

There are no other alternative methods that can accomplish the intended benefit.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
HHS implements the Iowa Adoption Exchange in accordance with requirements of the Iowa Code.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
Not applicable.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 203 and adopt the following **new** chapter in lieu thereof:

CHAPTER 203
IOWA ADOPTION EXCHANGE

441—203.1(232) Definitions.

“Children who are difficult to place” means “child” as described in 441—subrule 201.3(1), children under state guardianship for whom an adoptive home is not available within 90 days after termination and children as part of a sibling group of more than three children.

“Iowa adoption exchange system” or *“exchange system”* is a computerized system established to facilitate the adoptive placement of children by matching children legally available for adoption and approved families desiring to adopt a child who is difficult to place.

“Recruitment, retention, training and support (RRTS) contract” means the state’s contractor(s) responsible for activities related to licensing foster families and approving adoptive families, providing support services to foster and preadoptive families, conducting preservice and in-service training, and assisting in matching children in need of foster home care.

441—203.2(232) Children to be registered on the exchange system.

203.2(1) All children who are difficult to place shall be registered on the exchange system within 60 days of receipt of the termination of parental rights court order unless a deferral is granted by the adoption program manager.

203.2(2) Licensed child-placing agencies shall register a child whose parental rights have been terminated and who is under their guardianship using one of the following methods:

- a.* If the agency is registering less than four children in a calendar year, the agency shall submit the Waiting Child Enrollment form to the department.
- b.* If the agency registers more than three children in a calendar year, the agency shall access the exchange system and enter the child’s name and data.

441—203.3(232) Families to be registered on the exchange system.

203.3(1) Approved families wishing to adopt a child who is difficult to place shall be registered on the exchange system by the department.

203.3(2) Licensed child-placing agencies and certified adoption investigators shall register an approved family on the exchange using one of the following methods:

- a.* If the licensed child-placing agency is registering less than four families a calendar year, the agency shall submit the Exchange Referral of Family form to the department.
- b.* If the licensed child-placing agency registers more than three children in a calendar year, the agency shall access the exchange system and enter the family’s name and data.
- c.* Certified adoption investigators shall submit the Exchange Referral of Family form to the department.

441—203.4(232) Matching process. Using the computerized exchange system, the department and licensed child-placing agencies shall search for approved families to meet the needs of the available

children. The child's and family's workers shall be contacted for additional information needed to make an informed decision concerning possible adoptive placements.

These rules are intended to implement Iowa Code section 232.119.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 204
“Subsidized Guardianship Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 234.6

State or federal law(s) implemented by the rulemaking:

- Fostering Connections to Success and Increasing Adoptions Act of 2008.
- Iowa Code sections 232.117, 234.6, and 249A.4.
- Iowa Code section 232.104(2)“d”(2), section 232.104(6), chapter 232D and section 633.552.
- 1999 Iowa Acts, chapter 203, section 15, subsection 9.
- 2006 Iowa Acts, House File 2734, section 17, subsection 10.
- Social Security Act Sections 472 and 473(d)(3).

Public Hearing

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

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 204 seeks to increase access to guardianship arrangements by implementing a Subsidized Guardianship Program to provide financial assistance to guardians of eligible children who are in foster care but are not able to be adopted and are not able to return home. Eligible children include those aged ten years or older or part of a sibling group with a child aged ten years or older, who have been previously under the custody of HHS, with a documented permanency goal of guardianship or another planned permanent arrangement. Prospective guardians must be licensed, have a significant relationship with the child, and seek a long-term commitment.

Payments to approved guardians may include:

- Monthly maintenance payments with the maximum monthly rate made pursuant to the foster family care maintenance rates.
- Guardianship subsidy at a rate negotiated with HHS, not to exceed the state’s current daily basic foster care rate plus any eligible daily special needs allowance or sibling allowance.
- Reimbursement for nonrecurring expenses necessary to finalize a guardianship up to \$2,000.
- Reimbursement for special services for the child such as outpatient medical care, travel expenses for family therapy, or equipment required to accommodate a special need.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Legally responsible parents may incur a support debt under the child support recovery program for foster care payments made. Subsidy payments are considered foster care payments for the purpose of child support recovery. This is reflected in the figure below, labeled as “Child Support Debt Incurred.”

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

Guardians of eligible children who are in foster care but are not able to be adopted and are not able to return home.

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

- Quantitative description of impact:

Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

| | SFY 2023 | SFY 2024 | SFY 2025 | Three-Year Total |
|---|-------------|-------------|-------------|------------------|
| Costs | | | | |
| Subsidy Payments to Guardians | -\$53,000 | -\$299,000 | -\$570,000 | -\$858,000 |
| Benefits | | | | |
| Child Support Debt Incurred | Unknown | Unknown | Unknown | Unknown |
| Federal Title IV-E Funding | \$13,000 | \$58,000 | \$121,000 | \$163,000 |
| Improved Outcomes for Children under Guardianship | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | -\$40,000 | -\$241,000 | -\$449,000 | -\$695,000 |

*All monetary figures have been rounded to the nearest thousand.

- Qualitative description of impact:

The amount of subsidy is negotiated between HHS and the qualified guardian based on the needs of the child and circumstances of the family providing guardianship. Guardianship is a safe alternative to adoption, providing permanency for the youth without requiring formal termination of parental rights. HHS has continued to increase the number of children in the subsidized guardianship program since its inception in 2019. In SFY 2023, 139 children received a guardianship subsidy payment. Chapter 204 requires that other services available to meet the needs of an eligible child that are free of charge be explored and used prior to spending subsidy funds.

3. Costs to the State:

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

Any implementation costs incurred by HHS for operation of the adoption program are reflected in the cost-benefit analysis in the Regulatory Analysis for 441—Chapter 200 (IAB 11/1/23) and are not reflected here.

Federal funds received through the Title IV-E Federal Payments for Adoption Assistance Program are used to assist in funding subsidized guardianships. The federal participation rate varies; in SFY 2022, Iowa’s participation rate was 21.51 percent. These funds are reflected in the figure above, labeled as “Federal Title IV-E Funding.”

- Anticipated effect on state revenues:

Not applicable.

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

The cost-benefit analysis above shows a net value of -\$695,000 over the three fiscal years studied and improved outcomes for children in subsidized guardianship care. These costs may also be offset by support debt under the child support recovery program. The alternative to a child exiting the child welfare system through the Subsidized Guardianship Program is the child remaining in the child welfare system. Should a child remain in the child welfare system, the State would incur costs to maintain a child in need of assistance case that may continue until the child reaches the age of 18.

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

HHS implements the Subsidized Guardianship Program in accordance with requirements of the Iowa Code and federal regulations; overall, HHS implements the program as directed and has little flexibility in determining program elements. HHS does maintain flexibility in identifying children eligible for guardianship subsidy assistance.

6. Alternative methods considered by the agency:

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

No answer provided.

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

HHS has defined eligible children as those aged ten years or older or part of a sibling group with a child aged ten years or older, who have been previously under the custody of HHS. HHS believes the eligibility criteria described in this chapter is at the level necessary to provide for safe and stable guardianship arrangements for children in need of guardianship. Alternative approaches might include expanding or reducing the eligibility criteria detailed here.

Small Business Impact

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

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

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

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 204 and adopt the following **new** chapter in lieu thereof:

CHAPTER 204 SUBSIDIZED GUARDIANSHIP PROGRAM

441—204.1(234) Definitions.

“*Child*” means either a person less than 18 years of age or a person 18, 19, or 20 years of age who meets one or more of the following conditions:

1. Is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma.
2. Is attending an instructional program leading to a high school equivalency diploma.
3. Has been identified by the director of special education of the area education agency as a child requiring special education as defined in Iowa Code section 256B.2(1).

“*Guardianship subsidy*” means a monthly payment to assist in covering the cost of room, board, clothing, and spending money for the child.

“*Nonrecurring expenses*” means reasonable and necessary guardianship fees, court costs, attorney fees, and other expenses that are directly related to finalizing the legal guardianship of a child. These expenses shall be limited to attorney fees, court filing fees and other court costs.

“*Relative*” means a person to whom a child is related by blood, marriage, or adoption, or a person who has a significant, committed, positive relationship with the child.

“*Sibling group*” means at least two children who are whole or half-siblings. A sibling group may include adopted children who have a common parent.

441—204.2(234) Eligibility.

204.2(1) *General conditions of eligibility.* The guardian named in a permanency order under Iowa Code section 232.104(2) “d”(1) or chapter 232D for a child who was previously in the custody of the department is eligible for subsidy when all of the following conditions exist:

- a. The child has a documented permanency goal of:
 - (1) Guardianship; or
 - (2) Another planned permanent living arrangement.
- b. The child is either:
 - (1) Ten years of age or older and consents to the guardianship; or
 - (2) Part of a sibling group with a child aged ten or older.
- c. The child has lived in continuous foster family care with the prospective guardian for the six months before initiation of the guardianship subsidy.
- d. The prospective guardian is a licensed relative foster parent who has a significant relationship with the child and demonstrates a willingness to make a long-term commitment to the child’s care.
 - (1) The guardian shall be a relative as defined in this chapter.
 - (2) Placement with that guardian must be in the best interest of the child. The best-interest determination must be documented in the case file.
- e. A child who is part of a sibling group with a child ten years of age or older may be eligible for subsidy if all criteria are met. The following conditions for the younger sibling shall also be met:
 - (1) The sibling is placed as a foster child in the same prospective guardian home.
 - (2) The guardian and the department agree it is appropriate for guardianship to be granted for the sibling.

204.2(2) *Residency.* The subsidized guardianship applicant or recipient need not reside in Iowa.

204.2(3) *Unearned income.* The family or the guardian shall provide to the department documentation from the source of the child’s unearned income.

204.2(4) *Other services.* Other services available to meet the needs of the child that are free of charge, such as federal, state, and local governmental programs, or private assistance programs, shall be explored and used prior to the expenditure of subsidized guardianship funds.

441—204.3(234) Application. Applications for the subsidized guardianship program may be made at any county office of the department.

204.3(1) *Application forms.* Application for a subsidized guardianship shall be made on the approved department form.

204.3(2) *Eligibility determination.* The determination of whether a child meets the eligibility requirements is made by the department. The proposed guardian shall be notified in writing of the decision of the department regarding the child’s eligibility for the program and the amount of subsidy to be provided.

204.3(3) *Effective date.* The effective date of the guardianship subsidy payment shall be the date the guardianship order is signed if all other conditions of eligibility are met.

204.3(4) *Redetermination.* The department shall review the child's eligibility, the needs of the child and the child's unearned income every 12 months. Reviews may be done more often if needed due to the child's need for special services, revision of the subsidy amount because of the child's age, or a request for review by the guardian.

204.3(5) *Determination of eligibility after age 18.* The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive subsidy to the age of 21 to complete high school or equivalency or due to the child's physical, intellectual, or mental health disability.

a. A disability shall be diagnosed by a physician, a qualified mental health professional or a qualified intellectual disability professional.

b. The diagnosed disability shall be current within one year prior to the child's eighteenth birthday.

c. Documentation of the child's diagnosed disability shall be provided by the child's guardian to the department.

d. Upon the child's reaching the age of 18, the subsidy may continue until the child completes courses leading to a high school diploma or equivalency or reaches the age of 21. Documentation of school enrollment and completion shall be provided by the child's guardian.

441—204.4(234) Negotiation of amount of subsidy.

204.4(1) *Subsidy agreement.* The amount of subsidy shall be negotiated between the department and the guardian and shall be based upon the needs of the child and the circumstances of the family.

204.4(2) *Amount of subsidy.* Each time negotiations are completed, the department and the guardian shall complete and sign a new Guardianship Subsidy Agreement.

a. The maximum monthly maintenance payment for a child in subsidized guardianship shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child as found in 441—subrule 156.6.

(1) The rate for the guardianship subsidy shall not exceed the state's current daily basic foster care rate plus any daily special needs allowance or sibling allowance for which the child is eligible, as found in 441—subrule 156.6.

(2) Reserved.

b. If the subsidized guardianship payment is less than the maximum amount allowed, the guardian may request an increase if there is a substantial change in the child's needs and circumstances that requires additional resources.

c. Guardianship payments shall continue if the guardian dies or becomes incapacitated and has named a successor guardian in the Guardianship Subsidy Agreement or in any amendments to the agreement.

204.4(3) *Placement outside of home.* If a child needs to be placed out of the guardian's home and the plan is for the child to return to the guardian within six months, a partial subsidy amount may be negotiated.

204.4(4) *Nonrecurring expenses.* The nonrecurring expenses necessary to finalize a guardianship shall not exceed \$2,000.

204.4(5) *Special services.*

a. Reimbursement to the guardian family or direct payment made to a provider is limited to the following services.

(1) Outpatient individual or family services provided from a non-Medicaid provider only with approval from the department and when one of the following applies:

1. The services are not available from a Medicaid provider within a reasonable distance from the family.

2. The child and the family were receiving therapy or counseling from a non-Medicaid provider and it would not be in the child's best interest to disrupt the services.

3. Available Medicaid providers lack experience in working with foster, adopted, or blended families.

(2) Travel-related expenses including transportation, meals and lodging not covered by Medicaid for visitation or family therapy when the child is receiving Medicaid-paid services out of the home.

(3) Supplies and equipment as required by the child's special needs and unavailable through other resources.

(4) Funeral benefits at the amount allowed for a foster child in accordance with 441—156.8(234).

b. Any single special service and any special service delivered over a 12-month period costing \$500 or more shall have prior approval from the department prior to expending program funds.

c. For all Medicaid-covered services, the department shall reimburse at the same rate and duration as Medicaid as set forth in 441—79.1(249A).

441—204.5(234) Parental liability. These subsidy payments are considered foster care payments for purposes of child support recovery and as such create a support debt for the legally responsible parent or parents.

441—204.6(234) Determination of ongoing subsidy eligibility and suspension of subsidy payments.

204.6(1) Eligibility for continuation of guardianship subsidy shall be evaluated when the department has good cause to suspect the guardian is not providing financial support or is no longer legally responsible for the child. Good cause includes, but is not limited to, the following circumstances:

- a.* The child is placed in out-of-home care under Iowa Code chapter 232.
- b.* A person alleges the guardian is not providing financial support to the child.
- c.* A person other than the guardian is awarded legal custody of the child.
- d.* A person other than the guardian is appointed as the guardian of the child.
- e.* The child has applied for food assistance or other benefits.
- f.* The child has not resided with the guardian for the past 30 consecutive days.
- g.* The guardian is incarcerated.
- h.* The guardian is awaiting trial for criminal charges related to harm caused to a child in the home.

204.6(2) The department will contact the child's guardian via letter, telephone, or electronic or other means and document such efforts if an evaluation is determined to be necessary.

204.6(3) If such an evaluation occurs, the child's guardian shall provide documentation of support, including receipts, to the department upon request.

204.6(4) Upon completion of the department's evaluation of the child's continued eligibility for guardianship subsidy, the department will issue a written notice to the guardian documenting required ongoing actions by the guardian, including an expectation of continued cooperation by the guardian to provide documentation of ongoing support to the child at the request of the department.

204.6(5) The department shall suspend guardianship subsidy payments if the guardian refuses to cooperate with any department evaluation designed to determine legal responsibility for the child or to determine whether the guardian is providing financial support for the child.

204.6(6) Through a Notice of Decision, the department will notify the guardian that the guardianship subsidy payment will be suspended, modified, or terminated.

204.6(7) When the child has resided out of the guardian's home for 30 consecutive days, the department shall request a renegotiation of the Guardianship Subsidy Agreement with the guardian to reduce or suspend payments as agreed to by the guardian.

441—204.7(234) Termination of subsidy. A Guardianship Subsidy Agreement remains in effect until the subsidy is terminated. The subsidy shall terminate when any of the following occur, and a notice shall be sent which states the reason for the termination:

1. The child reaches the age of 18, unless the department determines that the subsidy may continue until the child reaches the age of 21 as specified by subrule 204.3(5).
2. The child marries or enlists in the military.

3. The child no longer lives with the guardian, except for placement outside the home as limited by subrule 204.4(3).
4. The relationship ends due to the death of the child.
5. The terms of the Guardianship Subsidy Agreement are concluded.
6. The guardian requests that the guardianship payment cease.
7. The department has determined the guardian is not providing financial support to the child.
8. The guardian fails to abide by the terms of the Guardianship Subsidy Agreement.
9. The guardianship case is terminated by court order.
10. The department funds for subsidized guardianship are no longer available.
11. Due to incapacity, the guardian can no longer discharge the responsibilities necessary to protect and care for the child, the guardianship has been or will be vacated, and a successor guardian was not named in the Guardianship Subsidy Agreement.
12. The death of the guardian when a successor guardian is not named in the Guardianship Subsidy Agreement (one in a single-parent family or both in a two-parent family).

441—204.8(234) Reinstatement of subsidy. Reinstatement of the subsidy shall be made when the subsidy was terminated at the guardian's request and the guardian has requested reinstatement.

441—204.9(234) Appeals. The guardian may appeal adverse determinations pursuant to 441—Chapter 7.

441—204.10(234) Medical assistance. Children eligible for subsidy are entitled to medical assistance as defined in 441—Chapter 75. When an Iowa child receives medical assistance from another state, Iowa shall discontinue paying any medical costs the month following the move unless additional time is necessary for a timely notice of decision to be provided to the guardian.

The funding source for medical assistance is based on the following criteria:

1. Children from Iowa residing in Iowa shall be covered by Iowa's medical assistance.
2. Children from Iowa residing in another state shall receive medical assistance from the state of residence if eligible. Iowa shall provide medical assistance for children not eligible in their state of residence. Medical assistance available in the family's state of residence may vary from Iowa's medical assistance.
3. Children from another state residing in Iowa shall continue to be covered by the other state's medical assistance unless the state has adopted the adoption assistance interstate compact and a contract between Iowa and the other state exists.

These rules are intended to implement Iowa Code section 234.6 and 2006 Iowa Acts, House File 2734, section 17, subsection 11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193G—Chapter 4
“Professional Conduct”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 272C and 544C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 544C, 272C, and 17A
and 2023 Iowa Acts, Senate File 135

Public Hearing

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

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/vic-ewjz-qdz
Or dial: 336.515.0134
PIN: 836 758 241#
More phone numbers:
tel.meet/vic-ewjz-qdz?pin=5875932671903

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Interior Design Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

The rule provides registrants and Iowans with the rules of conduct for registered interior designers while practicing interior design to protect the public health, safety, and welfare by ensuring safe interiors.

The Board and Commissions Review Committee recommended this Board be eliminated; however, a new law was enacted to allow registered interior designers to stamp/seal technical documents. This rule provides information to registrants as well as building code officials about the stamp regulations.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Costs for registering are those to interior designers who wish to stamp/seal technical documents and those who wish to use the title registered interior designers. Costs to the licensee include registration and the cost of a seal, which costs under \$50.

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes oversight of the rules of conduct, questions from licensees and the public, administration of board meetings, etc. Shared staff at approximately 0.1 full-time equivalent (FTE) position support the entirety of the work of the Board. Staff salaries to support the work of the Board are covered by the

Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The general public and registrants benefit from this rule. The rule allows registered interior designers to stamp/seal construction documents, which had previously been available to only professional engineers and architects.

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

- Quantitative description of impact:

The Board believes that the benefits achieved justify the costs because the rule provides rules of professional conduct for registered interior designers as well as the rule for stamping/sealing technical documents. Using the services of a registered interior designer is generally less costly than the services of an architect.

Registrants bear costs in the form of licensing fees and compliance.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing rules of professional conduct for registered interior designers allows for consumers to choose a design professional other than an architect or professional engineer to stamp/seal technical documents and still meet safety standards.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage the full scope of Board activities, which include oversight of the rules of conduct, questions from licensees and the public, administration of board meetings, etc. Shared staff at approximately 0.1 FTE support the entirety of the work of the Board. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues.

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

The Board and Commissions Review Committee recommended this Board be eliminated; however, a new law was enacted to allow registered interior designers to stamp/seal technical documents. This rule provides information to registrants as well as building code officials about the stamp regulations.

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

This rule is less restrictive than full licensure. The rule pertains only to those who wish to hold themselves as registered interior designers. This rule informs registrants as well as the public on the provisions for professional conduct, including under what circumstances a registered interior designer may seal their work.

6. Alternative methods considered by the agency:

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

This rule is less restrictive than full licensure. The rule pertains only to those who wish to hold themselves as registered interior designers. This rule informs registrants as well as the public on the

provisions for professional conduct, including under what circumstances a registered interior designer may seal their work.

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

The Board and Commissions Review Committee recommended this Board be eliminated; however, a new law was enacted to allow registered interior designers to stamp/seal technical documents. This rule provides information to registrants as well as building code officials about the stamp regulations.

Small Business Impact

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

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

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

The proposed rule relates to public safety concerns that are present whether the business is a small business or a large organization. The rule is meant to ensure public safety in terms of professional conduct for registered interior designers. While some registered interior designers are running a small business of their own, some also work for large organizations. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193G—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4 PROFESSIONAL CONDUCT

193G—4.1(544C) Rules of conduct. A registered interior designer shall maintain a high standard of integrity and professional responsibility within the profession of registered interior design to protect the public health, life safety, and welfare. Failure by a registrant to adhere to the provisions of Iowa Code sections 272C.10 and 544C and following rules of conduct may be grounds for disciplinary action.

4.1(1) Competence.

a. A registered interior designer shall act with reasonable care and competence and apply the technical knowledge and skill ordinarily applied by a registered interior designer of good standing providing interior design services in the same locality.

b. The board may initiate discipline against a registered interior designer or may, when appropriate, refer a registered interior designer to the board's impaired practitioner review committee based on habitual intoxication or addiction to the use of drugs or other impairment which adversely affects the registrant's ability to practice in a safe and competent manner.

4.1(2) Conflict of interest. A registered interior designer may accept compensation for interior design services from more than one party on a project if circumstances are fully disclosed and agreed to in writing by all interested parties.

4.1(3) Full disclosure.

a. A registered interior designer shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for registration or renewal of registration.

b. A registered interior designer shall not assist in the application for registration of a person known by the registered interior designer to be unqualified with respect to education, training, experience or character.

c. A registered interior designer engaged in the practice of interior design must act in the best interest of the client and shall not allow integrity, objectivity or professional judgment to be impaired.

d. A registered interior designer with knowledge of a violation of these rules by another registered interior designer shall report such knowledge to the board.

4.1(4) Professional conduct.

a. A registered interior designer shall respect the confidentiality of sensitive information obtained in the course of the interior designer's professional activities.

b. A registered interior designer shall not engage in conduct involving fraud, deceit, misrepresentation or dishonesty in the practice of interior design.

c. A registered interior designer shall neither attempt to obtain a contract to provide interior design services through any unlawful means nor assist others in such an attempt.

d. A registered interior designer shall neither offer nor make any payment to a governmental official with the intent of influencing the official's judgment in connection with a prospective or existing project in which the interior designer has an interest.

4.1(5) Seal and certificate of responsibility.

a. The seal under Iowa Code section 544C.14 shall include:

- (1) An outside circle with a diameter of approximately 1 3/4 inches.
- (2) The name of the registered interior designer and the words "Registered Interior Designer."
- (3) The Iowa registration number and the word "Iowa."

b. The seal will substantially conform to the sample shown below:



c. A legible rubber stamp, electronic image or other facsimile of the seal may be used.

d. Each technical submission submitted to a client or any public agency, hereinafter referred to as the official copy, shall contain an information block on its first page or on an attached cover sheet with application of a seal by the registered interior designer in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature shall be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional shall be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block will substantially conform to the sample shown below:

| | |
|---------|---|
| S E A L | <p>I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered interior designer under the laws of the state of Iowa.</p> <hr/> <p style="text-align: center;">Signature Date</p> <p>Printed or typed name _____</p> <p>Registration number _____</p> <p>My registration renewal date is June 30, _____.</p> <p>Pages or sheets covered by this seal: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> |
|---------|---|

e. The information requested in each information block must be typed or legibly printed in permanent ink or a secure electronic signature. An electronic signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule if it is protected by a security procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the registrant’s responsibility to ensure, prior to affixing an electronic signature to a technical submission, that security procedures are adequate to:

- (1) Verify that the signature is that of a specific person, and
- (2) Detect any changes that may be made or attempted after the signature of the specific person is affixed. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

f. It is the responsibility of the registered interior designer who signed the original submission for forwarding copies of all changes and amendments to the technical submission, which becomes a part of the official copy of the technical submission, to the public official charged with the enforcement of the state, county, or municipal building code.

g. A registered interior designer is responsible for the custody and proper use of the seal. Improper use of the seal may be grounds for disciplinary action.

h. The seal appearing on any technical submission establishes prima facie evidence that said technical submission was prepared by or under the responsible charge of the individual named on that seal.

This rule is intended to implement Iowa Code chapter 544C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 1
“Organization and Operation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 546
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 546

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) +1 402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

This proposed chapter provides basic information on the structure and function of the professional licensing boards, formerly part of the Banking Division/Professional Licensing Bureau. These professional licensing boards are now a part of DIAL. The professional licensing boards are responsible for the licensing and regulation of the specified boards: Iowa Accountancy Examining Board, Architectural Examining Board, Engineering and Land Surveying Examining Board, Interior Design Examining Board, Landscape Architectural Examining Board, Real Estate Appraiser Examining Board and Real Estate Commission.

The professional licensing boards are dedicated to the protection of the public through responsible regulations. To achieve this goal and to ensure citizens of the state receive professional, competent, and safe services, each professional licensing board:

- Adopts rules and establishes standards;
- Examines, licenses, certifies or issues permits or licenses to practitioners;
- Sets standards for license renewal and continuing education;
- Investigates all complaints filed and considered alleged violations of its practice or title act and Iowa regulations;
- Conducts disciplinary hearings; and
- Actively monitors the compliance of licensees with orders issued by the board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Licensees will bear the costs of this proposed rulemaking for examinations, education and licensing applications.

The Department will bear the costs of this proposed rulemaking in the staff time needed to provide administrative support and coordinating activities for the seven professional licensing boards. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

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

Licensees and the public will benefit from the proposed rulemaking. The work of the Department is done with a focus on protecting the public, who receives services from licensed professionals.

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

- Quantitative description of impact:

There are no costs to the public to implement this proposed chapter. The licensees will bear the costs for exams, education and licensing applications. The costs to the individual licensees will vary by industry.

- Qualitative description of impact:

Staff is needed to regulate the professions as directed in Iowa Code. Such work is done with a focus on protecting the public, who receives services from these licensed professionals.

3. Costs to the State:

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

Costs to the agency are the staff time needed to provide administrative support and coordinating activities for the seven professional licensing boards. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover operation costs of the licensing boards.

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

Regulating professions creates costs for the licensed professionals for education, continuing education, examinations and licenses. Not regulating these professions puts the public at risk of harm from work completed by nonlicensed individuals. Members of these professions work in high-skilled industries that require specific skill sets to adequately provide services to the public.

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

The boards have not identified a less restrictive method for regulating these professions.

6. Alternative methods considered by the agency:

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

Less restrictive alternatives include not regulating the professions. The boards believe that elimination of regulations could have a negative impact on the public. Eliminating regulations could lead to more complaints, investigations, lawsuits and public discipline.

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

The boards believe regulation is necessary to ensure the public's well-being. The work of the boards is done with a focus on protecting the public, who receives services from these licensed professionals.

Small Business Impact

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

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

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

The professionals licensed include those working for small businesses, as well as large corporations and industries. The proposed rules are intended to be less restrictive for small business. If a licensee identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, the licensee could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1 ORGANIZATION AND OPERATION

193—1.1(546) Purpose of 193—Chapter 1. This chapter describes the organization and operation of the accountancy examining board, architectural examining board, engineering and land surveying examining board, interior design examining board, landscape architectural examining board, real estate appraiser examining board, and the real estate commission of the department of inspections, appeals, and licensing (hereinafter referred to as “professional licensing boards”).

193—1.2(546) Scope of rules. The rules for the professional licensing boards are promulgated under Iowa Code chapter 17A and section 10A.103 and apply to all matters before the professional licensing boards. No rule shall, in any way, relieve a person affected by or subject to these rules, or any person affected by or subject to the rules promulgated by the various boards from any duty under the laws of this state.

193—1.3(546) Definitions.

“*Administrator*” means the director of the department of inspections, appeals, and licensing.

“*Board*” means an examining board or commission within the department of inspections, appeals, and licensing.

“*Department*” means the department of inspections, appeals, and licensing.

“*License*” means any license, registration, certificate, or permit that may be granted by one of the professional licensing boards.

“*Licensee*” means any person granted a license by one of the professional licensing boards.

“*Person*” means an individual, corporation, partnership, association, professional corporation, licensee, certificate holder, or registrant.

“*Staff*” means employees assigned to one of the professional licensing boards.

193—1.4(546) Purpose of the professional licensing boards. The professional licensing boards coordinate the administrative support for the following boards:

1.4(1) The engineering and land surveying examining board is a seven-member board appointed by the governor and confirmed by the senate. The board administers Iowa Code chapter 542B, Professional Engineers and Land Surveyors, and board rules published under agency number [193C] in the Iowa Administrative Code.

1.4(2) The accountancy examining board is an eight-member board appointed by the governor and confirmed by the senate. The board administers Iowa Code chapter 542, Public Accountants, and board rules published under agency number [193A] in the Iowa Administrative Code.

1.4(3) The real estate commission is a seven-member commission appointed by the governor and confirmed by the senate. The commission administers Iowa Code chapters 543B, Real Estate Brokers and Salespersons; 543C, Sales of Subdivided Land Outside of Iowa; 557A, Time-Shares; and commission rules published under agency number [193E] in the Iowa Administrative Code.

1.4(4) The architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. The board administers Iowa Code chapter 544A, Licensed Architects, and board rules published under agency number [193B] in the Iowa Administrative Code.

1.4(5) The landscape architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. The board administers Iowa Code chapter 544B, Landscape Architects, and board rules published under agency number [193D] in the Iowa Administrative Code.

1.4(6) The real estate appraiser examining board is a seven-member board appointed by the governor and confirmed by the senate. The board administers Iowa Code chapter 543D, Real Estate Appraisals and Appraisers, and board rules published under agency number [193F] in the Iowa Administrative Code.

1.4(7) The interior design examining board is a seven-member board appointed by the governor and confirmed by the senate. The board administers Iowa Code chapter 544C, Registered Interior Designers, and board rules published under agency number [193G] in the Iowa Administrative Code.

193—1.5(546) Responsibilities of the boards. All of the boards retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters. Each board will adopt rules pursuant to Iowa Code chapter 17A. Decisions by each board are final agency actions for purposes of Iowa Code chapter 17A.

193—1.6(546) Responsibilities of the administrator.

1.6(1) To make rules pursuant to Iowa Code chapter 17A to implement board duties except to the extent that rulemaking authority is vested in the boards in the bureau.

1.6(2) To carry out policy-making and enforcement duties assigned to the boards under the law.

1.6(3) To hire, allocate, develop, and supervise members of the staff employed to perform the duties assigned to the boards, including designating staff to act as the executive officer, who may be referred to as the board administrator, for and lawful custodian of the records of each board in the bureau.

1.6(4) To coordinate the development of an annual budget for the boards.

1.6(5) To supervise and direct personnel and other resources to accomplish duties assigned by law.

1.6(6) To authorize expenditures from any appropriation or fund established on behalf of the boards.

1.6(7) Except to the extent that decision-making authority is vested in the boards or other body, decisions of the administrator are final agency actions pursuant to Iowa Code chapter 17A.

1.6(8) Except to the extent otherwise vested in the boards, the administrator has the authority to establish fees assessed to the regulated industry.

193—1.7(546) Custodian of records, filings, and requests for public information. Unless otherwise specified by the rules of the boards, an individual board is the principal custodian of the individual board’s

own orders, statements of law or policy issued by the individual board, legal documents, and other public documents on file.

Any interested party may examine all public records promulgated or maintained by the boards during regular business hours.

193—1.8(272C,542,542B,543B,544A,544B,544C) Applicant contact information. In addition to the mailing address(es) that need to be provided in accordance with the individual board's rules, applicants of the boards need to provide a telephone number and, if applicable, an email address. The boards will honor the "safe at home" address issued by any state's program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person's physical location.

193—1.9(272C,542,542B,543B,544A,544B,544C) Newsletter.

1.9(1) The administrator or administrator's designee may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated professions. This official information may include statutory requirements, statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education, and professional development), board business, board meetings, board news, and matters related thereto.

1.9(2) The boards may notify licensees about matters such as license renewal in the newsletter.

193—1.10(272C,542,542B,543B,544A,544B,544C) Applications. Unless otherwise regulated by an individual board's rules, abandoned applications are deemed withdrawn. An application is abandoned if the applicant has not accessed or modified the application through the electronic licensing database within the preceding six months.

These rules are intended to implement Iowa Code section 546.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 2
“Allocation of Disciplinary Fees and Costs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 272C

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) +1 402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

This proposed chapter sets forth fees that may be assessed to a licensee for disciplinary hearings. The proposed rules outline how the fees are paid and what the fees may be applied toward in accordance with Iowa Code chapter 272C.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees will bear the costs of this proposed rulemaking. The individual professional licensing boards of the Department will assess a \$75 fee to licensees when contested hearings are initiated pursuant to Iowa Code section 272C.6. These fees are used to offset the costs of the disciplinary hearing.
 - Classes of persons that will benefit from the proposed rulemaking:
The individual professional licensing boards and the public will benefit from this proposed rulemaking. The individual professional licensing boards are able to use the fees to offset some of the costs of the contested hearings.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Licensees are assessed a fee of \$75 should they have a disciplinary matter that moves to a contested case hearing. This fee is used to offset some of the costs of the contested hearing. Iowa Code section 272C.6 authorizes an individual professional licensing board to assess this fee.

- Qualitative description of impact:

This proposed rulemaking specifies how contested case hearing fees are assessed and allocated. The rulemaking informs the public and licensees of these fees. The fees help reduce the administrative burden on an individual professional licensing board to conduct disciplinary matters against licensees that have violated the individual professional licensing board's rules or Iowa statutes.

3. Costs to the State:

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

Costs to the Department include the staff time needed to provide administrative support and coordinate activities for the seven professional licensing boards. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Department staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover the operations of the individual professional licensing boards.

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

No costs are imposed on the public. Iowa Code chapter 272C authorizes the individual professional licensing boards to assess a fee of \$75 against a licensee when a contested case hearing is initiated for disciplinary matters. The fee is used to offset some of the costs to an individual professional licensing board to hold a contested hearing. If the individual professional licensing boards were not able to assess the fees, the costs to hold the hearings would come solely out of the Licensing and Regulation Fund, which is also funded by licensing fees.

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

A less costly or less intrusive method would be reducing or eliminating the contested case hearing fee to licensees. The individual professional licensing boards believe the fees are reasonable and relatively low. The fees are similar to, but are much less expensive than, costs for civil and criminal court hearings. The fees are used to offset the actual costs of the hearings, which benefits the other licensees and allows the individual professional licensing boards to keep licensing fees at a reasonable cost.

6. Alternative methods considered by the agency:

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

The individual professional licensing boards could reduce or eliminate the contested case hearing fee to the licensees. However, the individual professional licensing boards believe the current fees are reasonable and relatively low. The fees are only assessed against the licensees that engage in behaviors that may lead to disciplinary action and require the use of contested case hearings.

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

The individual professional licensing boards believe the current fees are reasonable and relatively low. The fee provisions provide some deterrence to licensees from engaging in behaviors that would violate an individual professional licensing board's rules.

Small Business Impact

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

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

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

While some licensees may be small business owners or be employed by a small business, some are also employed by large corporations. To charge one class of licensees a fee for disciplinary hearings and not the other would not be fair. If a licensee identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established wavier process.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
ALLOCATION OF DISCIPLINARY FEES AND COSTS

193—2.1(272C) Allocation of disciplinary fees and costs.

2.1(1) Definition.

"Board(s)" includes the professional licensing boards as defined in 191—Chapter 1.

2.1(2) All hearing fees and costs assessed by the boards will be paid directly to the department and held in a separate fund administered by the administrator.

2.1(3) The administrator will distribute moneys held in this fund during the fiscal year in which those moneys are paid. Distributions from the fund are made upon the request of a board and in the sole discretion of the administrator. A distribution received by a board under this chapter will be used only for expenditures related to disciplinary hearings.

2.1(4) The administrator will consider the following factors in exercising discretion as to whether to distribute funds to a requesting board:

a. The remaining funds in the board's allocated appropriation for disciplinary hearings in that fiscal year.

b. The number of disciplinary hearings the board has scheduled for the remainder of that fiscal year; the nature and seriousness of those hearings; and the public health, safety, and welfare interests implicated by those hearings.

c. Whether the board has adopted and implemented hearing cost recovery rules.

2.1(5) The administrator will distribute a percentage of the remaining fees and costs to each board.

2.1(6) The fees and costs allocated back to the individual professional licensing boards will be considered repayment receipts as defined in Iowa Code section 8.2. The fees and costs allocated back to each professional board will be applied to the costs incurred by each profession for prosecution of contested cases that could result in disciplinary action.

This rule is intended to implement Iowa Code section 272C.6(6).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 3
“Vendor Appeals”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 546
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 546

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

This proposed rulemaking specifies the process for vendors to appeal a bid decision when a formal bidding process is not handled by the Department of Administrative Services. The rulemaking provides a uniform process for all boards in the legacy professional licensing and regulation bureau.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Vendors that want to appeal a decision will invest time and effort into the appeal process, as well as incidental costs.

Costs to the Department include staff time needed to provide administrative support and coordinate activities of the boards. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

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

Vendors benefit from this proposed rulemaking because the rulemaking provides the vendors a uniform process to appeal bid decisions.

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

- Quantitative description of impact:

There are relatively few costs incurred with this proposed rulemaking. Vendors may incur incidental costs throughout the appeal process.

- Qualitative description of impact:

This proposed rulemaking provides a uniform procedure for vendors to appeal a bid decision. The uniformity across the boards simplifies the proposed rules, making it easier for vendors to follow and implement when needed.

3. Costs to the State:

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

Costs to the Department include staff time needed to provide administrative support and coordinate activities of the professional licensing boards. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Staff salaries to cover the costs of board operations are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover the operation costs.

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

The costs incurred by this proposed chapter are minimal. The costs incurred by vendors vary as the costs are not direct costs of the rule, but incidental to the nature of the appeal process. The Department is not privy to the actual costs incurred during the appeal process. Without the appeal process, vendors would have no recourse to dispute a bid that was not conducted under the formal bidding process of the Department of Administrative Services.

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

The less costly or less intrusive option would be to eliminate Chapter 3. The boards believe the rules are necessary to provide a uniform appeal process. Without the rules, vendors would have no recourse to dispute a bid. The costs of the rule are already very minimal.

6. Alternative methods considered by the agency:

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

The Department has not identified a less restrictive alternative.

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

The Department has not identified a less restrictive alternative. The proposed rulemaking has minimal costs.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

While some vendors may be small business owners or be employed by a small business, some are also employed by large corporations. If a licensee identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, a licensee could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
VENDOR APPEALS

193—3.1(546) Purpose. This chapter outlines a uniform process for vendor appeals for all professional licensing boards as defined in 191—Chapter 1. The process is applicable only when board services are acquired through a formal bidding procedure not handled by the department of administrative services or the office of the chief information officer.

193—3.2(546) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the board may appeal by filing a written notice of appeal with the board within five days of the date of the award, exclusive of Saturdays, Sundays, and legal state holidays. A written notice may be filed by email. The notice of appeal needs to state the vendor's completed legal name, street address, telephone number, email address, and the specific grounds upon which the vendor challenges the board's award, including the legal authority, if any, and be received by the board within the time frame specified to be considered timely. The notice of appeal commences a contested case.

193—3.3(546) Procedures for vendor appeals. Each board's procedures for licensee disciplinary hearings are applicable, except as provided in these rules.

3.3(1) Upon receipt of a notice of vendor appeal, the board will issue a written notice of the date, time and location of the appeal hearing to both the aggrieved vendor or vendors and the successful vendor. Service of the written notice of hearing will be sent to the email address provided by the appellant unless the appellant specifically requests that notice be sent by certified mail. A hearing will be held within 60 days of the date the notice of appeal was received by the board.

3.3(2) All hearings are open to the public.

3.3(3) Discovery requests, if any, will be served by the parties within ten days of the filing of the notice of appeal. Discovery responses or objections are due at least seven business days prior to hearing.

3.3(4) At least three business days prior to the hearing, the parties will exchange witness and exhibit lists. The parties will be limited at hearing to the witnesses and exhibits timely disclosed unless the board finds good cause to allow additional witnesses or exhibits at hearing.

3.3(5) The hearing, at the option of the board or administrative law judge, may be conducted in person, by telephone, or virtually. When not conducted in person, all exhibits will be delivered to the board or administrative law judge no less than two business days prior to the hearing.

3.3(6) Oral proceedings will be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand will bear the costs. Copies of tapes of oral proceedings or transcripts of certified shorthand reporters will be paid for by the requester.

3.3(7) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition will be filed with the notice of appeal and state the reasons justifying

a stay. The filing of the petition for stay does not automatically stay the award. The board may grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the award, the party will suffer substantial and irreparable injury without the stay, and the interest of the public or licensees will not be significantly harmed. A stay may be vacated at any time upon application by any party or the board on its own motion with prior notice to all parties.

3.3(8) The record of the contested case includes all materials specified in Iowa Code section 17A.12(6) and any other relevant procedural documents regardless of their form.

3.3(9) The board or administrative law judge may request the parties to submit proposed findings and conclusions or briefs.

3.3(10) Any request for continuance needs to be in writing, specifying the grounds, and filed no later than seven business days prior to hearing.

3.3(11) Requests for rehearing need to be made to the board within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision is not necessary to exhaust administrative remedies.

3.3(12) Judicial review of the board's final decision may be sought in accordance with the contested case provisions of Iowa Code section 17A.19.

193—3.4(546) Procedures for board referral to an administrative law judge. The board, in its discretion, may refer a vendor appeal for hearing before a qualified administrative law judge. The hearing procedures will be substantially the same, but the ruling of an administrative law judge acting as the sole presiding officer will constitute a proposed decision. Board review of a proposed decision will be according to Iowa Code section 17A.15(2) and this chapter. Nothing in this rule will prevent the board from hearing a vendor appeal with the assistance of an administrative law judge. This rule merely authorizes an alternative procedure. The appealing vendor may also request that an administrative law judge act as presiding officer pursuant to 193—subrule 7.10(2).

3.4(1) The proposed decision will become the final decision of the board 14 days after mailing of the proposed decision, unless prior to that time a party submits an appeal of the proposed decision, or the board seeks review on its own motion.

3.4(2) Notice of an appeal for review of a proposed decision or notice of the board's own review will be mailed to all parties by the board's executive officer. Within 14 days after mailing of the notice of appeal or the board's review, any party may submit to the board exceptions to and a brief in support of or in opposition to the proposed decision, copies of which will be mailed by the submitting party to all other parties to the proceeding. The board's executive officer will notify the parties if oral argument will be heard and specify whether oral argument will be heard in person, by telephone or virtually. The executive officer will schedule the board's review of the proposed decision not less than 30 days after mailing of the notice of appeal or the board's own review.

3.4(3) Failure to appeal a proposed decision will preclude judicial review unless the board reviews on its own motion.

3.4(4) Review of a proposed decision will be based on the record and limited to the issues raised in the hearing. The issues will be specified in the notice of appeal of a proposed decision. The party requesting the review will be responsible for transcribing any tape of the oral proceedings or arranging for a transcript of oral proceedings reported by a certified shorthand reporter.

3.4(5) Each party will have the opportunity to file exceptions and present briefs. The executive officer may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the executive officer shall notify all parties of the date, time and location at least ten days in advance.

3.4(6) The board will not receive any additional evidence, unless it grants an application to present additional evidence. Any such application will be filed by a party at least five business days in advance of oral argument. Additional evidence will be allowed only upon a showing that it is material to the outcome and that there were good reasons for failure to present it at hearing. If an application to present additional evidence is granted, the board will order the conditions under which it shall be presented.

3.4(7) The board's final decision will be written and may incorporate all or part of the proposed decision.

These rules are intended to implement Iowa Code section 546.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 4
“Social Security Numbers and Proof of Legal Presence”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 546
State or federal law(s) implemented by the rulemaking: Iowa Code sections 252J.8(1) and 272D.8(1)
and chapter 546 and 8 U.S.C. 1621 and 42 U.S.C. 666(a)(13)

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

This proposed chapter outlines the process for applicants and licensees to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621). This chapter also establishes the requirement that a licensee provide a social security number under 42 U.S.C. 666(a)(13) and Iowa Code sections 252J.8(1) and 272D.8(1) for the purposes of collecting child support and debts owed to the State of Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The licensee generally bears no cost because the information required is typically already in the licensee’s possession.

The Department bears costs for staff time needed to provide administrative support and coordinate activities for the seven professional licensing boards. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

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

The public and licensees will benefit from the proposed rulemaking. The rulemaking ensures that those receiving professional licenses in Iowa are authorized to work in the United States. Additionally, the requirement of providing social security numbers ensures licensees are not avoiding important financial obligations, such as child support or debts owed to the state.

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

- Quantitative description of impact:

The public does not bear any costs from the proposed rulemaking. The rules provide protection to the public by ensuring those issued a professional license are authorized to work in the United States.

- Qualitative description of impact:

This proposed rulemaking ensures all licensees abide by federal and state laws to provide proof of a legal presence and social security number. These rules set out procedures to implement the state and federal laws requiring the production of proof of ability to work and a social security number.

3. Costs to the State:

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

Costs to the agency include the staff time needed to provide administrative support and coordinate activities for the seven professional licensing boards. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

This proposed rulemaking does not impose costs on licensees or the public. Inaction could result in individuals obtaining professional licenses who are not authorized to work in the United States. If a person obtains a license without authorization, it could put a future employer at risk.

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

The Department has not identified a less costly or less intrusive method for achieving the purpose of this proposed rulemaking. The rules do not cost licensees or the public anything to implement. The rules set out the procedures to implement federal and state laws, as required.

6. Alternative methods considered by the agency:

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

Alternate methods were not considered by the Department since these rules are required by state and federal statute.

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

Alternate methods were not considered by the Department since these rules are required by state and federal statute.

Small Business Impact

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

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

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

Because this proposed rulemaking implements state and federal laws required by statute, the Department is unable to allow a deviation for small businesses. The requirement of authorization to work is necessary whether the licensee is a small business or a large organization.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
SOCIAL SECURITY NUMBERS AND PROOF OF LEGAL PRESENCE

193—4.1(546) Purpose. This chapter outlines a uniform process for applicants and licensees of the professional licensing boards as defined in 191—Chapter 1 to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621). This chapter also addresses the requirement that a license applicant provide a social security number under 42 U.S.C. 666(a)(13) and Iowa Code sections 252J.8(1) and 272D.8(1) for purposes including the collection of child support obligations and debts owed to the state of Iowa.

193—4.2(546) Applicability.

4.2(1) Applicants and licensees who are U.S. citizens or permanent resident aliens may be requested to produce evidence of their lawful presence in the United States as a condition of initial licensure or license renewal. Acceptable evidence (List A) is outlined in subrule 4.3(1).

4.2(2) Applicants and licensees residing in the United States, other than those described in subrule 4.2(1) above, may be requested to provide evidence of lawful presence in the United States at the time of initial licensure and with every subsequent renewal. Acceptable evidence (List B) is outlined in subrule 4.3(2).

4.2(3) Evidence is not required by foreign national applicants or licensees who are not physically present in the United States.

193—4.3(546) Acceptable evidence. The professional licensing boards accept as proof of lawful presence in the United States documents outlined in Lists A and B below. The professional licensing boards will not routinely retain the evidence sent and will not return the evidence once submitted. Documents may be retained in computer “imaged” format. Legible copies will be accepted. Original documents will not be necessary unless a question arises concerning the documentation submitted.

4.3(1) List A—acceptable documents to establish U.S. citizenship.

a. A copy of a birth certificate issued in or by a city, county, state, or other governmental entity within the United States or its outlying possessions.

b. U.S. Certificate of Birth Abroad (FS-545, DS-135) or a Report of Birth Abroad of U.S. Citizen (FS-240).

c. A birth certificate or passport issued from:

1. Puerto Rico, on or after January 13, 1941.

2. Guam, on or after April 10, 1989.
3. U.S. Virgin Islands, on or after February 12, 1927.
4. Northern Mariana Islands after November 4, 1986.
5. American Samoa.
6. Swain's Island.
7. District of Columbia.
- d. A U.S. passport (expired or unexpired).
- e. Certificate of Naturalization (N-550, N-57, N-578).
- f. Certificate of Citizenship (N-560, N-561, N-645).
- g. U.S. Citizen Identification Card (I-79, I-197).
- h. An individual Fee Register Receipt (Form G-711) that shows that the person has filed an application for a New Naturalization or Citizenship Paper (Form N-565).
- i. Any other acceptable document which establishes a U.S. place of birth or indicates U.S. citizenship.

4.3(2) List B—acceptable documents to establish alien status.

a. An alien lawfully admitted for permanent residence under the Immigration and Naturalization Act (INA). References to the INA in this rule are to the INA as amended to November 1, 2023. Evidence includes:

1. INS Form I-551 (Alien Registration Receipt Card commonly known as a “green card”); or
2. Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.

b. An alien who is granted asylum under Section 208 of the INA. Evidence includes:

1. INS Form I-94 annotated with stamp showing grant of asylum under Section 208 of the INA.
2. INS Form I-668B (Employment Authorization Card) annotated “274a.12(a)(5).”
3. INS Form I-776 (Employment Authorization Document) annotated “A5.”
4. Grant Letter from the Asylum Office of INS.
5. Order of an immigration judge granting asylum.

c. A refugee admitted to the United States under Section 207 of INA. Evidence includes:

1. INS Form I-94 annotated with stamp showing admission under Section 207 of the INA.
2. INS Form I-668B (Employment Authorization Card) annotated “274a.12(a)(3).”
3. INS Form I-766 (Employment Authorization Document) annotated “A3.”
4. INS Form I-571 (Refugee Travel Document).

d. An alien paroled into the United States for at least one year under Section 212(d)(5) of the INA. Evidence includes INS Form I-94 with stamp showing admission for at least one year under Section 212(d)(5) of the INA.

e. An alien whose deportation is being withheld under Section 243(h) of the INA (as in effect immediately prior to September 30, 1996) or Section 241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-2-8). Evidence includes:

1. INS Form I-668 (Employment Authorization Card) annotated “271a.12(a)(10).”
2. INS Form I-766 (Employment Authorization Document) annotated “A10.”
3. Order from an immigration judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA.

f. An alien who is granted conditional entry under Section 203(a)(7) of the INA as in effect prior to April 1, 1980. Evidence includes:

1. INS Form I-94 with stamp showing admission under Section 203(a)(7) of the INA.
2. INS Form I-668 (Employment Authorization Card) annotated “274a.12(a)(3).”
3. INS Form I-776 (Employment Authorization Document) annotated “A3.”

g. An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980). Evidence includes:

1. INS Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”) with the code CU6, CU7, or CH6.
2. Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with code CU6 or CU7.

3. INS Form I-94 with stamp showing parole as “Cuban/Haitian Entrant” under Section 212(d)(5) of the INA.

h. An alien paroled into the United States for less than one year under Section 212(d)(5) of the INA. Evidence includes INS Form I-94 showing this status.

i. An alien who has been declared a battered alien. Evidence includes INS petition and supporting documentation.

j. Any other documentation acceptable under the INA.

193—4.4(252J,272D,546) Social security number disclosure.

4.4(1) An individual applying for a license from a professional licensing board will disclose the individual’s social security number on the application form unless:

a. The applicant demonstrates to the satisfaction of the board that the applicant does not possess and is not eligible for a social security number, or

b. The applicant demonstrates or attests that the applicant is in the process of applying for a social security number and will provide such number within 60 days of the date on which the applicant submits the application to the board. The license of an applicant who is licensed pursuant to this subrule may be revoked for failure to provide a valid social security number within 60 days of the date on which the application was filed.

4.4(2) An applicant who does not possess a social security number and is not eligible for a social security number will need to demonstrate lawful presence in the United States, if applicable, and provide government-issued photo identification as needed to verify identity. If circumstances change and the applicant or licensee later attains a social security number, the applicant or licensee will disclose the social security number to the board within 30 days of the date on which the social security number is issued.

These rules are intended to implement Iowa Code chapter 546.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 6
“Investigatory Subpoenas”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 272C, 542, 542B,
543B, 543D, 544A, 544B, and 544C

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

This proposed rulemaking provides the public and licensees with information about the professional licensing boards’ investigatory subpoena authority and procedures. The boards utilize investigatory subpoenas to gather information and investigate allegations against a licensee reported to the board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is not a direct cost to the licensee to comply with this proposed rulemaking. However, a licensee does have to pay licensing application and renewal fees, which in turn gives a regulated professional licensing board the ability to hire staff to investigate the complaints. Licensees and those who may be practicing without a license are responsible for costs associated with disciplinary actions, including responding to subpoenas.

The Department bears the cost of staff to review complaints, investigate complaints and issue the investigatory subpoenas. A regulated professional licensing board reviews the investigative information at board meetings. The board members are paid a per diem of \$50 for official board duties and mileage. Mileage costs have been minimal due to the use of virtual meetings. Staff salaries to support the work of

the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

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

The public and licensees benefit from this rulemaking. The proposed rulemaking ensures the licensees have knowledge of the investigative procedures and use of subpoenas to obtain information. This ensures licensees understand their rights and responsibilities surrounding investigatory subpoenas. The investigative process also benefits a regulated professional licensing board because it permits the board to gather needed information to determine if a violation of board rules did occur. In turn, the public benefits since the investigatory process is the primary mechanism the boards have to ensure the public safety and welfare.

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

- Quantitative description of impact:

The legacy Professional Licensing and Regulation Bureau opened approximately 429 complaints against licensees last year. Of those opened complaints, approximately 145 went to a contested case hearing. The investigatory subpoena process allows a regulated professional licensing board to gather information outside of the complaint form to determine whether disciplinary action is needed or the case can close.

- Qualitative description of impact:

The purpose of an investigatory subpoena is to provide additional relevant information to a regulated professional licensing board and enable the board to make informed decisions and protect the public from unscrupulous practice. Eliminating the investigatory subpoena could cause some complaints, which appear frivolous on the face, to be closed without investigation or without having the full information to determine whether discipline is needed. This could potentially lead to acts detrimental to the public going unchecked, which would ultimately be harmful to the public. This process is fairly similar across the country for regulated professions.

3. Costs to the State:

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

Costs to the agency include staff to support the work of the regulated professional licensing boards. Board members are paid \$50 per diem for official board duties as well as mileage. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Staff salaries to support the work of the regulated professional licensing boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover operations of the regulated professional licensing boards.

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

The purpose of this proposed rulemaking is to provide a mechanism for a regulated professional licensing board to gather and investigate necessary relevant information after a complaint is filed and the board believes a contested hearing may be necessary. Allowing the board to investigate and gather information through subpoenas allows the board to make informed decisions on whether the board needs to expend the resources and time for a contested case hearing.

The public and state bear no costs of this proposed rulemaking because a board's costs are funded through the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. The Fund is created through licensing fees paid by the licensees for initial and renewal licenses.

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

A regulated professional licensing board's investigatory practices are largely dictated by statute in Iowa Code chapter 272C. These proposed rules set forth the mechanisms to implement Iowa Code chapter 272C as it relates to investigatory subpoenas. The majority of the time and costs to implement these rules come from the resources to investigate and the board's time to review and deliberate on the findings. The process in Iowa is similar to the processes used across the country for regulated and licensed professionals.

6. Alternative methods considered by the agency:

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

Department staff held conversations on alternative methods to implement and enforce these proposed rules. After reviewing the processes used in surrounding states, staff found that Iowa's process is similar to other states. The Department has not identified a less restrictive alternative to implement and enforce these rules.

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

A regulated professional licensing board's ultimate goal is ensuring the public safety and welfare. The purpose of these proposed rules is to allow a method for a board to gather information on licensees. Boards need the ability to investigate complaints, gather information and make informed decisions.

Small Business Impact

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

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

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

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The licensees affected by these rules come from a variety of professions. Some could be running a small business, be self-employed, or working for large firms. To exempt small businesses from adhering to these rules would jeopardize the public. Additionally, the rules create very minimal, if any, expense for the individual licensee.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6 INVESTIGATORY SUBPOENAS

193—6.1(17A,272C,542,542B,543B,543D,544A,544B,544C) **Investigatory subpoena authority.** Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), professional licensing boards, as defined in 191—Chapter 1, have the authority to issue subpoenas to compel the

production of professional records, books, papers, correspondence and other records that are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law. To ensure consistency in procedure, all boards will issue investigatory subpoenas according to the uniform procedures set forth in rule 193—6.2(17A,272C,542,542B,543B,543D,544A,544B,544C). Given the range of investigative options otherwise utilized by each board, additional detail on investigative procedures is provided separately in each board's individual rules.

193—6.2(17A,272C,542,542B,543B,543D,544A,544B,544C) Investigatory subpoena procedures.

6.2(1) The board's executive officer or designee may, upon the written request of a board investigator or on the officer's own initiative, subpoena books, papers, records, and other real evidence which the officer determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions need to be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

6.2(2) A written request for a subpoena or the executive officer's written memorandum in support of the issuance of a subpoena will contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of the reasons that the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 6.2(1) have been satisfied.

6.2(3) Each subpoena will contain the following:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production, or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena needs to be filed;
- e. The signature, address and telephone number of the executive officer or designee;
- f. The date of issuance;
- g. A return of service.

6.2(4) Any person who is aggrieved or adversely affected by compliance with the subpoena who desires to challenge the subpoena needs to file a motion with the board to quash or modify the subpoena, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days. The motion will describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

6.2(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

6.2(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling needs to appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions provided that all of the time frames are reduced by one-half.

6.2(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

These rules are intended to implement Iowa Code chapters 17A, 272C, 542, 542B, 543B, 543D, 544A, 544B, and 544C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 7
“Contested Cases”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 272C, and 546
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 272C, and 546

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) +1 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

This proposed rulemaking provides procedures for contested case hearings, including time requirements for taking action on a contested case; direction on the service of the statement of charges and notice of hearing, as well as the required contents of the statement of charges and notice of hearing; and the discovery process, including issuance of subpoenas, the handling of pretrial motions, and conferences and procedures for the hearings. The purpose of this rulemaking is to provide the licensee an outline of how a contested case proceeding is initiated and the rights and responsibilities of the licensee during that process. Contested cases help ensure that the public is protected and outlines due process for alleged bad actors.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The licensee may incur costs of legal representation to represent the licensee during the investigation and contested case hearing. Licensees are assessed a \$75 fee for each contested hearing as set forth in Iowa Code chapter 272C.

The Department incurs costs to implement the proposed rules, including Department staff to investigate the complaints, prepare the investigative files for the professional licensing board's

review and hold the contested hearings. Staff salaries are paid by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

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

The public and licensees benefit from the proposed rulemaking. The rules provide licensees with a process that ensures due process is met when allegations arise against a licensee. The public benefits by the assurance that allegations are taken seriously and an avenue exists to investigate and hold hearings against the licensee for conduct that may be a violation of a professional licensing board's rules.

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

- Quantitative description of impact:

The licensee may incur costs for representation during the contested case hearing. Additional costs may include the recording and transcribing of records should the case go to appeal, examination and responding to discovery requests and service of subpoenas. The board also assesses a \$75 fee to the licensee to offset the costs of the contested hearing.

The professional licensing board incurs costs for service by mail, publication or personal service at the initiation of a contested case hearing as well as the Department staff necessary to conduct the contested case hearing and the board members' time for hearings. The board does have the option to consolidate cases if the licensee has more than one complaint filed against the licensee at the same time. This allows for more efficient use of time and resources for both the board and the licensee.

Of the 429 complaints opened in the legacy Professional Licensing and Regulation Bureau last year, there were approximately 145 contested cases and 4 formal hearings.

- Qualitative description of impact:

The process for contested cases is largely dictated by Iowa Code chapter 17A. The professional licensing boards believe the proposed rules provide a balanced regulatory process for initiating and holding contested case hearings. These rules ensure a licensee is aware of the licensee's rights and responsibilities when a contested case hearing is set and also provides licensees with guidance on what the licensee can do in terms of legal representation, discovery requests and options after the board issues a final order. Without this rule, boards would have wide discretion on how to conduct contested hearings and implement discipline against a licensee and the licensees would not have a procedure in place to contest allegations in an adversarial fashion. These rules ensure due process is afforded to each licensee.

3. Costs to the State:

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

The Department incurs costs in the form of board staff, professional licensing board members' per diem and procedural costs to carry out these proposed rules. Department staff assist with preparing the notices for hearing and correspondence with the licensee to set hearings. Board members are paid a per diem of \$50 for official board business and mileage to attend the contested case hearing. Boards generally hold contested hearings at the time of their regularly scheduled board meetings, but sometimes, additional dates must be set just for the contested hearings. The board is responsible for ensuring process of service on the licensee to initiate the contested case hearing, which includes costs to serve the licensee by mail, publication or personal service. The board does attempt to utilize the least expensive option (service by mail) before an alternative service option. Department staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the professional licensing boards.

During contested case hearings, a board utilizes an administrative law judge (ALJ) to preside over the hearing and provide rulings on pre-hearing motions. The ALJ is paid through state funds. The Department does not have data on ALJ salaries or the percentage of work completed by the ALJ on behalf of the boards.

- Anticipated effect on state revenues:

There is no anticipated impact of this rule on state revenues. Staff salaries to support the work of the professional licensing boards are covered by the Licensing and Regulation Fund established in 2023

Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the professional licensing boards.

During contested case hearings, a board will utilize an ALJ to preside over the hearing and provide rulings on pre-hearing motions. The ALJ is paid through state funds. The professional licensing boards do not have data on ALJ salaries or the percentage of work completed by the ALJ on behalf of the professional licensing boards.

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

The legacy Professional Licensing and Regulation Bureau (PLRB) regulates licenses for seven boards. Without these proposed rules, boards would have wide discretion on how to conduct contested hearings and implement discipline against a licensee and the licensees would not have a procedure in place to contest the allegations in an adversarial fashion. The rules ensure due process is afforded to each licensee.

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

The process for contested case hearings is largely dictated by Iowa Code chapter 17A. A professional licensing board does have the option to consolidate cases if a licensee has more than one complaint filed against the licensee at the same time. The board also has procedures in place for contested case hearings when there is no factual dispute. This allows for more efficient use of time and resources for both the board and licensee.

6. Alternative methods considered by the agency:

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

Department staff held conversations about alternative, less intrusive methods to implement and enforce these proposed rules. Staff was not able to identify a less intrusive method; however, the rule does provide for alternatives such as consolidated cases and hearings with no factual dispute to allow for more efficiency in handling contested cases where applicable.

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

The process for contested cases is largely dictated by Iowa Code chapter 17A. The Department has little discretion on how to conduct the hearings or the process of getting to the hearings.

Small Business Impact

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

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

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

While some licensees could be running a small business, some also work for large firms and corporations. The Department does recognize that the impact of a contested case could certainly be greater to a small business than it would be to a large company, for instance, to carve time out of the

schedule for a small business owner to be present for a hearing. However, the rules are proposed to ensure due process for all licensees, including small business licensees. If a licensee identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, the licensee could utilize the Department's established waiver process to request a waiver from that rule.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
CONTESTED CASES

193—7.1(17A,542,542B,543B,543D,544A,544B,544C) Definitions. Except where otherwise specifically defined by law:

“*Board*” includes the professional licensing boards as defined in 191—Chapter 1.

“*Contested case*” means any adversary proceeding before a board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C; an adversary proceeding against a nonlicensee pursuant to Iowa Code section 542.14, 542B.27, 543B.34, 543D.21, or 544A.15; or any other proceeding designated a contested case by any provision of law, including but not limited to adversary proceedings involving license applicants and the reinstatement of a suspended, revoked or voluntarily surrendered license.

“*Issuance*” means the date of mailing of a decision or order, or date of delivery if service is by other means unless another date is specified by rule or in the order.

“*License*” means a license, registration, certificate, permit or other form of practice permission required or authorized by Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C.

“*Party*” means the state, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent or applicant, or an intervenor.

“*Presiding officer*” means the board and, when applicable, a panel of board members or an administrative law judge assigned to render a proposed decision in a nondisciplinary contested case.

“*Probable cause*” means a reasonable ground for belief in the existence of facts which would support a specified proceeding under applicable law and rules.

“*Quorum*” means a majority of the members of the board. Action may generally be taken upon a majority vote of board members present at a meeting who are not disqualified, although discipline may only be imposed by a majority vote of the members of the board who are not disqualified and, for the engineering and land surveying examining board, only upon an affirmative vote of at least five members of the board.

193—7.2(17A,542,542B,543B,543D,544A,544B,544C,546) Scope and applicability of the Iowa Rules of Civil Procedure. This chapter applies to contested cases conducted by all boards in the bureau. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

193—7.3(17A,272C) Commencement of a contested case and probable cause. A contested case in a disciplinary proceeding is commenced by the filing and service of a statement of charges and notice of hearing. A contested case in a nondisciplinary proceeding is commenced by the filing and service of a notice of hearing. A contested case may only be commenced by the board upon a finding of probable cause to do so by a quorum of the board.

193—7.4(17A,272C) Informal settlement. The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board

and the licensee agree to a settlement of the case, a statement of charges will be filed simultaneously with a consent order. The statement of charges and consent order may be separate documents or may be combined in one document. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order will have the force and effect of a final disciplinary order entered in a contested case and will be published as provided in rule 193—7.30(17A,272C). Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 193—7.42(546,272C).

193—7.5(17A) Statement of charges. The statement of charges will set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and will be in sufficient detail to enable the preparation of the respondent's defense. The statement of charges will be incorporated within or attached to the notice of hearing. The statement of charges and notice of hearing are public records open for public inspection under Iowa Code chapter 22.

193—7.6(17A,272C) Notice of hearing.

7.6(1) Contents of notice of hearing. Unless the hearing is waived, all contested cases will commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any incorporated or attached statement of charges, will contain those items specified in Iowa Code section 17A.12(2) and, if applicable, Iowa Code section 17A.18(3), and the following:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the respondent's counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement after charges are filed;
- h. Identification of the board or a panel of board members as the presiding officer, or statement that the presiding officer will be an administrative law judge from the department of inspections, appeals, and licensing;
- i. If applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 193—7.10(17A,272C), that the presiding officer be an administrative law judge from the department of inspections, appeals, and licensing; and
- j. A statement requiring or authorizing the respondent to submit an answer of the type specified in rule 193—7.9(17A,272C) within 20 days after service of the notice of hearing.
- k. If applicable, notification of the licensee's right to request a closed hearing in a licensee disciplinary proceeding.
- l. Information on who to contact if, because of a disability, auxiliary aids or services are needed for a party to participate in the matter.
- m. If applicable, the date, time, and manner of conduct of a prehearing conference under rule 193—7.21(17A,272C).
- n. The mailing address and email address for filing with the board and notice of the option of email service as provided in subrule 7.17(6).

7.6(2) Service of notice of hearing. Service of notice of hearing on a licensee to begin a contested case which may affect the licensee's continued licensure, such as a licensee disciplinary case or challenge to the renewal of a license, will be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the licensee or the licensee's duly authorized legal representative. Service of the notice of hearing to begin all other contested cases may additionally be made by certified mail, return receipt requested.

193—7.7(13,272C) Legal representation.

7.7(1) Every statement of charges and notice of hearing prepared by the board will be reviewed and approved by the office of the attorney general, which will be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board will not represent the board in that case but will represent the public interest.

7.7(2) The respondent or applicant may be represented by an attorney. The attorney will file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney will comply with Iowa Court Rule 31.14. Business entities may be represented in a contested case by a nonlawyer partner, officer, director, shareholder, member, director, or other owner or manager.

193—7.8(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding will file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

The request for a contested case proceeding will state the name and address of the requester; identify the specific disputed board action; describe issues of material fact in dispute; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved. If the board grants the request, the board will issue a notice of hearing. If the board denies the request, the board will issue a written order specifying the basis for the denial.

193—7.9(17A,272C) Form of answer.

7.9(1) Unless otherwise provided in the notice of hearing, the answer will contain the following information:

7.9(2) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the case, including explanations, remarks or statements of mitigating circumstances.

193—7.10(17A,272C) Presiding officer.

7.10(1) The presiding officer in all licensee disciplinary contested cases will be the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code sections 272C.6(1) and 272C.6(2). When board members act as presiding officer, they will conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 7.10(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

7.10(2) In cases which do not pertain to licensee discipline, the board may act as presiding officer or may notify the parties that an administrative law judge will act as presiding officer at hearing and issue a proposed decision. The use of an administrative law judge as presiding officer is only an option in cases which do not pertain to licensee discipline because only the board may conduct licensee discipline hearings pursuant to Iowa Code section 272C.6. Any party to a nondisciplinary case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing will need to file a written request within 20 days after service of a notice of hearing that identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.

7.10(3) The board will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision in a nondisciplinary contested case will have a J.D. degree unless waived by the board.

7.10(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

7.10(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 193—7.31(17A) and 193—7.32(17A). A party will need to timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

7.10(6) Unless otherwise provided by law, board members have the powers of and will comply with the provisions of this chapter which apply to presiding officers when reviewing a proposed decision of a panel of the board or an administrative law judge.

193—7.11(17A) Time requirements.

7.11(1) Time will be computed as provided in Iowa Code section 4.1(34).

7.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.

193—7.12(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193—7.13(17A,272C) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone or other electronic means. Parties will disclose at or before the prehearing conference if any witness will be testifying by telephone or other electronic means. Objections, if any, will be filed with the board and served on all parties at least three business days in advance of hearing.

193—7.14(17A) Disqualification.

7.14(1) A presiding officer or other person will withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

- c. Is subject to the authority, direction or discretion of any person who has personally investigated, 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;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

7.14(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. A person voluntarily appearing before the board or a committee of the board waives any objection to a board member or board staff both participating in the appearance and later participating as a decision maker or aid to the decision maker in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case will be disclosed if required by Iowa Code section 17A.17(3) and subrule 7.28(9).

7.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person will submit the relevant information for the record by affidavit and provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

7.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.14(1), the party will file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion will need to be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

7.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but will need to establish the grounds by the introduction of evidence into the record.

7.14(6) A motion to disqualify a board member or other person will first be directed to the affected board member or other person for determination. If the board member or other person determines that disqualification is appropriate, the board member or other person will withdraw from further participation in the case. If the board member or other person determines that withdrawal is not required, the presiding officer will promptly review that determination, provided that, if the person at issue is an administrative law judge, the review will be by the board. If the presiding officer determines that disqualification is appropriate, the board member or other person will withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer will enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 193—7.31(17A), if applicable, and seek a stay under rule 193—7.34(17A).

193—7.15(17A) Consolidation—severance.

7.15(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues

involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

7.15(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193—7.16(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

193—7.17(17A) Service and filing of pleadings and other papers.

7.17(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding will be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with their filing. Except for the original notice of hearing and statement of charges, and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. A notice of hearing and statement of charges will be served by the board as provided in subrule 7.6(2). Once a specific administrative law judge has been assigned to a case, copies of all prehearing motions will also be served on the administrative law judge.

7.17(2) Service—how made. Service upon a party represented by an attorney will be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

7.17(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding will be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party will be filed simultaneously with the board.

7.17(4) Filing—how and when made. Except where otherwise provided by law, a document is deemed filed at the time it is received by the board. Parties may file documents with the board by hand delivery or mail or by electronic transmission to the email address specified in the notice of hearing. If a document required to be filed within a prescribed period or on or before a particular date is received by the board after such period or such date, the document will be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the board. The board will not provide a mailed file-stamped copy of documents filed by email or other approved electronic means.

7.17(5) Proof of mailing. Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (insert board title) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

7.17(6) Electronic service. The presiding officer may by order or a party or a party's attorney may by consent permit service of particular documents by email or similar electronic means, unless precluded by a provision of law. In the absence of such an order or consent, electronic transmission will not satisfy service requirements, but may be used to supplement service when rapid notice is desirable.

Consent to electronic service by a party or a party's attorney will be in writing, may be accomplished through electronic transmission to the board and other parties, and will specify the email address for such service. Service by electronic transmission is complete upon transmission unless the board or party making service learns that the attempted service did not reach the party to be served.

193—7.18(17A) Discovery.

7.18(1) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 applies to contested case proceedings.

7.18(2) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions applies to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case will be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 applies to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 applies to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 applies to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission applies in a contested case proceeding.

7.18(3) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to a contested case proceeding. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceeding or impose an undue hardship. As a practical matter, the purpose of the disclosure requirements and discovery conference is served by the board's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 193—7.22(17A).

7.18(4) Iowa Rule of Civil Procedure 1.508 applies to discovery of any experts identified by a party to a contested case proceeding.

7.18(5) Discovery will be served on all parties to the contested case proceeding, but not be filed with the board.

7.18(6) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery will allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery will be ruled upon by the presiding officer. Opposing parties will be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

7.18(7) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193—7.19(17A,272C) Issuance of subpoenas in a contested case.

7.19(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas will be issued by the executive officer or designee upon a written request that complies with this rule. In the case of a request

for a subpoena of mental health records, the request will need to confirm compliance with the following conditions prior to the issuance of the subpoena:

- a.* The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- b.* Adequate safeguards have been established to prevent unauthorized disclosure;
- c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d.* An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

7.19(2) A request for a subpoena will include the following information, as applicable:

- a.* The name, address, email address, and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena is directed;
- c.* The date, time, and location at which the person is commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested;
- f.* The date, time and location for production, or inspection and copying; and
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 7.19(1) have been satisfied.

7.19(3) Each subpoena will contain, as applicable:

- a.* The caption of the case;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena will need to be filed;
- i.* The signature, address and telephone number of the executive officer or designee;
- j.* The date of issuance;
- k.* A return of service.

7.19(4) The executive officer or designee will mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena will so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

7.19(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, will need to file with the board a motion to quash or modify the subpoena within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days. The motion will describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then file a motion asking the presiding officer to issue an order compelling production.

7.19(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

7.19(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling will need to appeal the ruling to the board in accordance with the procedure applicable to

intra-agency appeals of proposed decisions set forth in rules 193—7.31(17A) and 193—7.32(17A), provided that all of the time frames are reduced by one-half.

7.19(8) If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

193—7.20(17A) Motions.

7.20(1) No technical form for motions is required. However, prehearing motions need to be in writing, state the grounds for relief, and state the relief sought.

7.20(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

7.20(3) The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 193—7.31(17A).

7.20(4) Motions pertaining to the hearing, except motions for summary judgment, will need to be filed and served at least seven days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

7.20(5) Motions for summary judgment will comply with the requirements of Iowa Rule of Civil Procedure 1.981 and are subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

7.20(6) Motions for summary judgment will need to be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion will need to file and serve a resistance within ten days from the date a copy of the motion was served unless otherwise ordered by the presiding officer. The time fixed for hearing or nonoral submission will be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 193—7.33(17A) and appeal pursuant to rule 193—7.32(17A).

193—7.21(17A,272C) Prehearing conference and disclosures.

7.21(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion will be filed not less than ten days prior to the hearing date. A prehearing conference will be scheduled not less than five business days prior to the hearing date. The board will set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference will be given by the board to all parties. For good cause, the presiding officer may permit variances from this rule.

7.21(2) Each party will disclose at or prior to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments need to be served on all parties.

7.21(3) In addition to the requirements of subrule 7.21(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters which the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters which will expedite the hearing.

7.21(4) Prehearing conferences will be conducted by telephone unless otherwise ordered. Parties will exchange and receive witness and exhibit lists in advance of a telephone prehearing conference. Unless otherwise provided in the order setting a prehearing conference, the prehearing conference will be conducted by an administrative law judge.

7.21(5) The parties will exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 7.26(4) no later than three business days in advance of hearing, or as ordered by the presiding officer at the prehearing conference.

193—7.22(17A) Continuances. Unless otherwise provided, applications for continuances will be made to the presiding officer.

7.22(1) A written application for a continuance will:

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

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance will need to confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance will be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

7.22(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance and may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

7.22(3) The board's executive officer or an administrative law judge may enter an order granting an uncontested application for a continuance. Upon consultation with the board chair or chair's designee, the board's executive officer or an administrative law judge may deny an uncontested application for a continuance, or rule on a contested application for continuance.

193—7.23(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal will be with prejudice.

193—7.24(17A) Intervention.

7.24(1) Motion. A motion for leave to intervene in a contested case proceeding will state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention will be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

7.24(2) *When filed.* Motion for leave to intervene will be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene will be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion will contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor will be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

7.24(3) *Grounds for intervention.* The movant will demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

7.24(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

193—7.25(17A,272C) Hearings. The presiding officer will be in control of the proceedings and have the authority to administer oaths and to admit or exclude testimony or other evidence and rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney at the party's expense.

7.25(1) *Examination of witnesses.* All witnesses will be sworn or affirmed by the presiding officer or the court reporter, and be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

7.25(2) *Public hearing.* The hearing will be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

7.25(3) *Record of proceedings.* Oral proceedings will be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof will be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription will be filed with and maintained by the board for at least five years from the date of decision.

7.25(4) *Order of proceedings.* Before testimony is presented, the record will show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings will generally be conducted in the following order, subject to modification at the discretion of the board:

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board will make a brief opening statement which may include a summary of charges and the names of any witnesses and documents to support such charges.

c. Each respondent will be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. The presentation of evidence on behalf of the respondent(s).

f. Rebuttal evidence on behalf of the state, if any.

g. Rebuttal evidence on behalf of the respondent(s), if any.

h. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

The order of proceedings will be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 193—7.38(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 193—7.39(546,272C).

7.25(5) Decorum. The presiding officer will maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

7.25(6) Immunity. The presiding officer will have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing will include the reasons for granting the immunity.

7.25(7) Sequestering witnesses. The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

7.25(8) Witness representation. Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

7.25(9) Depositions. Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

7.25(10) Witness fees. The parties in a contested case will be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses will be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses will be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

193—7.26(17A) Evidence.

7.26(1) The presiding officer will rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

7.26(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.26(3) Evidence in the proceeding will be confined to the issues as to which the parties received notice 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. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

7.26(4) The party seeking admission of an exhibit will provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents will be provided to opposing parties. Copies will also be furnished to members of the board. All exhibits admitted into evidence will be appropriately marked and be made part of the record. The state's exhibits will be marked numerically, and the applicant's or respondent's exhibits will be marked alphabetically.

7.26(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection needs to be timely and be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling will 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.

7.26(6) 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 will

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 will be marked as part of an offer of proof and inserted in the record.

7.26(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

193—7.27(17A) Default.

7.27(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

7.27(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

7.27(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 193—7.32(17A). A motion to vacate will state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated will be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

7.27(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

7.27(5) Properly substantiated and timely filed motions to vacate will be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties will have ten days to respond to a motion to vacate. Adverse parties are allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

7.27(6) "Good cause" for purposes of this rule has the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

7.27(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 193—7.31(17A).

7.27(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer will issue another notice of hearing and the contested case will proceed accordingly.

7.27(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

7.27(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 193—7.34(17A).

193—7.28(17A) Ex parte communication.

7.28(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there will be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board

or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 7.14(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

7.28(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

7.28(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

7.28(4) To avoid prohibited ex parte communications, notice needs to be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications will be provided in compliance with rule 193—7.17(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

7.28(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

7.28(6) The executive officer or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the executive officer or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and the executive officer or other persons comply with subrule 7.28(1).

7.28(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and will notify other parties when seeking to continue hearings or other deadlines pursuant to rule 193—7.22(17A).

7.28(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case will initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication will be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents will be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication will be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

7.28(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer will disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

7.28(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel will be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193—7.29(17A) Recording costs. Upon request, the board will provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record will be paid by the requesting party.

193—7.30(17A,272C) Final decisions, publication and client notification.

7.30(1) Final decision. When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board will be filed with the executive officer. A copy of the final decision and order will immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known U.S. Postal Service address or may be served as in the manner of original notices. A party's attorney may waive formal service and accept service in writing for the party. Copies will be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.

7.30(2) Publication of decisions. Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public and may be disseminated as provided in Iowa Code chapter 22 by the board or others. Final decisions relating to licensee discipline will be published in the professional licensing and regulation bureau's newsletter, may be published on the bureau's Web site, and may be transmitted to the appropriate professional association(s), national associations, other states, and news media, or otherwise disseminated. The board may, in its discretion, issue a formal press release.

7.30(3) Notification of clients. Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of a final decision of the board, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee will notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice will advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee will file with the board copies of the notices sent. Compliance with this requirement will be a condition for an application for reinstatement.

193—7.31(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board will weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review will need to be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193—7.32(17A) Appeals and review.

7.32(1) Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. All licensee disciplinary decisions are obligated to be issued by the board. A proposed disciplinary decision issued by a panel of the board will need to be acted upon by the full board in order to become a final decision. In nondisciplinary cases, a proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

7.32(2) Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision. Such an appeal is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

7.32(3) Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

7.32(4) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal needs to be signed by the appealing party or a representative of that party and contain a certificate of service. The notice will specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order which is being appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

- d. The relief sought;
- e. The grounds for relief.

7.32(5) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence will need to be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

7.32(6) Scheduling. The board will issue a schedule for consideration of the appeal.

7.32(7) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs will cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument will be filed with the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

7.32(8) Record. The record on appeal or review will be the entire record made before the hearing panel or administrative law judge.

193—7.33(17A) Applications for rehearing.

7.33(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

7.33(2) Content of application. The application for rehearing will state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application will state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.33(3), the applicant requests an opportunity to submit additional evidence.

7.33(3) Additional evidence. A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

7.33(4) Time of filing. The application will be filed with the board within 20 days after issuance of the final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the board unless the provisions of subrule 7.17(4) apply.

7.33(5) Notice to other parties. A copy of the application will be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board will serve copies of the application on all parties.

7.33(6) Disposition. An application for rehearing will be deemed denied unless the board grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the board.

7.33(7) Proceedings. If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

193—7.34(17A) Stays of board actions.

7.34(1) When available.

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition will be filed with the notice of appeal and will state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition will state the reasons justifying a stay or other temporary remedy. Seeking a stay from the board is required to exhaust administrative remedies before a stay may be sought from the district court.

7.34(2) *When granted.* In determining whether to grant a stay, the presiding officer or board will consider the factors listed in Iowa Code section 17A.19(5) “c.”

7.34(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

193—7.35(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

193—7.36(17A) Emergency adjudicative proceedings.

7.36(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the United States Constitution and Iowa Constitution and other provisions of law, the board 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 board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board will consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person 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;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

7.36(2) *Issuance of order.*

a. An emergency adjudicative order will contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board’s decision to take immediate action.

b. The written emergency adjudicative order will be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the board;
- (3) Certified mail to the last address on file with the board;
- (4) First-class mail to the last address on file with the board; or

(5) Electronic service. Fax or email notification may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax or email and has provided a fax number or email address for that purpose.

c. To the degree practicable, the board will select the procedure for providing written notice that best ensures prompt, reliable delivery.

7.36(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board will make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

7.36(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order will include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193—7.37(17A,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

7.37(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition will need to be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

7.37(2) If a party does file a timely application for rehearing, a judicial review petition will need to be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 7.33(6).

193—7.38(17A,272C) Reinstatement.

7.38(1) The term "reinstatement" as used in this rule will include both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. Reinstating a license to active status under this rule is a two-step process:

a. First, the board will need to determine whether the suspended, revoked, or surrendered license may be reinstated under the terms of the order revoking or suspending the license or accepting the surrender of the license and under the two-part test described in subrule 7.38(5).

b. Second, if the board grants the application to reinstate, the licensee will need to complete and submit an application to demonstrate satisfaction of all administrative preconditions for reinstatement of the license to active status, including verification of completion of all continuing education and payment of reinstatement and renewal fees.

7.38(2) Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender.

7.38(3) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

7.38(4) All proceedings for reinstatement will be initiated by the respondent, who will file with the board an application for reinstatement of the respondent's license. Such application will be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, will be subject to the same rules of procedure as other cases before the board. In addition, the board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to

seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

7.38(5) An application for reinstatement will allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with subrule 7.30(3) needs to also be established. The burden of proof to establish such facts will be on the respondent. An order of reinstatement may include such conditions as the board deems reasonable under the circumstances. The board may grant the application without hearing, but may not deny the application in whole or part without setting the matter for hearing or providing the applicant the opportunity to request a contested case hearing if aggrieved by a term of the reinstatement order.

7.38(6) An order of reinstatement will be based upon a decision that incorporates findings of fact and conclusions of law and needs to be based upon the affirmative vote of not fewer than a majority of the board. This order will be published as provided for in subrule 7.30(2).

193—7.39(546,272C) Hearing on license denial. If the board denies an application for an initial, reciprocal or comity license, the executive officer will send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 193—7.40(546,272C) will apply.

7.39(1) An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial will need to request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for a hearing needs to be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing will specify the factual or legal errors that the applicant contends were made by the board, needs to identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board will promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

7.39(2) The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 193—7.10(17A,272C). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 193—7.32(17A).

7.39(3) License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party will have the burden of establishing the affirmative of matters asserted, the applicant will have the ultimate burden of persuasion as to the applicant's qualification for licensure.

7.39(4) The board, after a hearing on license denial, may grant or deny the application for licensure. If denied, the board will state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

7.39(5) The notice of license denial, request for hearing, notice of hearing, record at hearing and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations and other persons or entities.

7.39(6) Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

193—7.40(546,272C) Denial of application to renew license. If the board denies a timely and sufficient application to renew a license, a notice of hearing will be issued to commence a contested case proceeding.

7.40(1) Hearings on denial of an application to renew a license will be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 7.39(2) and 7.39(4) to 7.39(6) will generally apply, although license denial hearings which are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

7.40(2) Pursuant to Iowa Code section 17A.18(2), an existing license will not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

7.40(3) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application will be:

- a.* Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;
- b.* Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;
- c.* Fully completed; and
- d.* Accompanied with the proper fee. The fee will be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

7.40(4) The administrative processing of an application to renew an existing license will not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

193—7.41(546,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment will be made directly to the professional licensing and regulation bureau of the banking division of the department of commerce pursuant to rule 193—2.1(272C).

7.41(1) The board may assess the following costs under this rule:

- a.* For conducting a disciplinary hearing, an amount not to exceed \$75.
- b.* All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal to the full board from a proposed panel decision, the appealing party will timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable in the circumstances.
- c.* All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs will include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses will be guided by Iowa Code section 622.69. The cost for expert witnesses will be guided by Iowa Code section 622.72. Mileage costs will not be governed by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.
- d.* All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the services of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost will include a reasonable expert witness fee. The expert witness fee will not exceed the expert's customary

hourly or daily rate, and will include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

7.41(2) When imposed in the board's discretion, hearing fees (not exceeding \$75) will be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule will be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed will need to be paid by the licensee.

a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by a majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board will have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditure. In order to rely on this provision, however, the final disciplinary order will need to notify the licensee that fees and expenses will be assessed once known.

7.41(3) Any party may object to the fees, costs or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within 10 days of any subsequent order establishing the amount of the assessment. A party's failure to timely object will be deemed a failure to exhaust administrative remedies. Orders which impose fees, costs or expenses will notify the licensee of the time frame in which objections will need to be filed in order to exhaust administrative remedies.

7.41(4) Fees, costs, and expenses assessed by the board pursuant to this rule will be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses will be considered repayment receipts as defined in Iowa Code section 8.2.

7.41(5) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board will constitute a violation of an order of the board, be grounds for discipline, and be considered prima facie evidence of a violation of Iowa Code section 272C.3(2) "a." However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

193—7.42(546,272C) Settlement after notice of hearing.

7.42(1) Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting assistant attorney general, the board's executive officer, or the board chair or chair's designee.

7.42(2) The board chair or chair's designee has authority to negotiate on behalf of the board but does not have the authority to bind the board to particular terms of settlement.

7.42(3) The respondent is not obligated to participate in settlement negotiations. The respondent's initiation of or consent to settlement negotiation constitutes a waiver of notice and opportunity to be heard during settlement negotiation pursuant to Iowa Code section 17A.17 and rule 193—7.28(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair's designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

7.42(4) Unless designated to negotiate, no member of the board will be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement will be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of settlement. If the board fails to approve the consent order, it will be of no force and effect to either party and will not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement which the respondent is free to accept or reject.

7.42(5) If the board and respondent agree to a consent order, the consent order will constitute the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and all attendant rights. A consent order in a licensee disciplinary case will

have the force and effect of a final disciplinary order entered in a contested case and will be published as provided in rule 193—7.30(17A,272C).

These rules are intended to implement Iowa Code chapters 17A, 252J, 272C, 272D, 542, 542B, 543B, 543D, 544A, 544B, and 544C and sections 261.126, 261.127 and 546.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 11
“Sales and Leases of Goods and Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 10A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 68B and 10A

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) +1.402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

This proposed chapter provides the process for professional licensing board members to gain authorization to sell goods or services to those who are subject to the regulatory authority of the board on which they serve. The rule provides for certain blanket consents previously authorized by the boards and filed with the Ethics and Campaign Disclosure Board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The public will not bear the costs of this proposed rulemaking. Licensees must provide a free application to the board for its consideration.

Costs to the Department include the staff time needed to provide administrative support and coordinating activities for the seven professional licensing boards. Department staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the professional licensing boards.

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

Licensees and the public will benefit from this proposed rulemaking. The rule provides information for licensees to continue their livelihood while volunteering to serve on a board.

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

- Quantitative description of impact:

This proposed rule generally does not incur any costs, other than professional licensing board functions to administratively carry out the rule. A licensee may have the expenditure of time to complete the application to a board for consent to sell goods and services, but the application itself is free.

- Qualitative description of impact:

The purpose of the proposed rule is to provide a process for professional licensing board members to obtain authorization to continue selling goods and services when they are serving on a board. This ensures the licensees and board members are acting in an impartial manner.

3. Costs to the State:

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

Costs to the Department include the staff time needed to provide administrative support and coordinating activities for the seven professional licensing boards. Department staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Department staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the professional licensing boards.

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

This proposed rule is largely dictated by statute in Iowa Code section 68B.4. The Department is required to implement a rule to ensure the statutory requirements are being followed.

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

The Department has not identified less costly or less intrusive methods for achieving the purpose of the proposed rulemaking. This rule is largely dictated by statute in Iowa Code section 68B.4, and the Department is required to implement a rule to ensure compliance with the statutory requirements for the sale of goods and services by professional licensing board members.

6. Alternative methods considered by the agency:

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

The Department has not identified any alternative methods since this proposed rule is largely dictated by Iowa Code chapter 68B.

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

This proposed rule is required by statute and largely dictated by Iowa Code chapter 68B.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

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

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

This proposed rule is required by Iowa Code chapter 68B. The Department does not have authority to provide discretion to small businesses. If a small business finds a rule to be overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, the small business could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 11 and adopt the following new chapter in lieu thereof:

CHAPTER 11
SALES AND LEASES OF GOODS AND SERVICES

193—11.1(68B) Selling or leasing of goods or services by members of the department of inspections, appeals, and licensing examining boards as defined in 191—Chapter 1. The board members cannot sell or lease, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department of inspections, appeals, and licensing except as authorized by this rule, and by the consent documents filed with the Iowa ethics and campaign disclosure board pursuant to Iowa Code section 68B.4 and the corresponding provisions of rule 351—6.11(68B).

11.1(1) Conditions of consent for members. Consent may be given by a majority of the members of the board upon a finding that the conditions required by Iowa Code section 68B.4, as described in 351—subrule 6.11(4), have been satisfied. The board may grant a blanket consent for sales and leases to classes of individuals, associations, or corporations when such blanket consent is consistent with 351—subrule 6.11(4) and the granting of single consents is impractical or impossible to determine.

11.1(2) Authorized sales and leases.

a. A member of a department of inspections, appeals, and licensing examining board may sell or lease goods or services to any individual, association, or corporation regulated by any division within the department of inspections, appeals, and licensing, other than the board on which that official serves. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. Each board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board.

b. A member of a department of inspections, appeals, and licensing examining board may sell or lease goods or services to any individual, association, or corporation regulated by the licensing board or commission of which that person is a member if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. In the event a complaint is filed with the licensing board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case, as provided, for instance, in the code of administrative judicial conduct at 481—paragraph 10.29(3) "b." Each board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board. The boards intend that the blanket consent be interpreted broadly to allow routine professional services offered directly to the general public and to licensees, such as continuing education instruction or peer review services. Such consent recognizes that those licensees most proficient and ethical in their professional careers may also be among those whose services are desirable to enrich the professional competence of

licensees. Interpreting the blanket consent broadly accordingly removes a possible disincentive to board membership.

c. Individual application and approval are not necessary for the sales and leases authorized by this rule and by the consents filed with the ethics and campaign disclosure board unless there are unique facts surrounding a particular sale or lease which would cause the sale or lease to affect the seller's or lessor's duties or functions, would give the buyer or lessee an advantage in dealing with the board, or would otherwise present a conflict of interest as defined in Iowa Code section 68B.2A or common law.

11.1(3) *Application for consent.* Prior to selling or leasing a good or service to an individual, association, or corporation subject to the regulatory authority of the department of inspections, appeals, and licensing, an official will obtain prior written consent, as provided in 351—subrule 6.11(3), unless the sale or lease is specifically allowed in subrule 11.1(2) and in the consents filed with the ethics and campaign disclosure board. The request for consent needs to be in writing and signed by the official requesting consent. The application needs to provide a clear statement of all relevant facts concerning the sale or lease. The application should identify the parties to the sale or lease and the amount of compensation. The application should also explain why the sale or lease should be allowed. All applications need to conform to the requirements of 351—subrule 6.11(3).

11.1(4) *Limitation of consent.* Consent will be in writing and be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this rule does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules. The board's ruling on each application, whether consent is conferred or denied or conditionally granted, will be filed with the ethics and campaign disclosure board pursuant to 351—subrule 6.11(7). An official who receives a denial or conditional consent may appeal the ruling to the ethics and campaign disclosure board as provided in 351—subrule 6.11(6).

This rule is intended to implement Iowa Code chapter 68B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 12
“Impaired Licensee Review Committees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 272C

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) +1 402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

The purpose of this proposed rule is to form a committee to monitor impaired licensees for the purpose of public safety. The committee may include a licensed practitioner who has expertise in the area of substance abuse and addiction treatment or other applicable impairment; one public member of a professional licensing board; and one licensee. The program is confidential, and participation is not a matter of public record. Specific eligibility criteria must be met to ensure that matters that may need to be addressed by the board are routed appropriately. The goal of the program is to ensure that a licensee is safe to practice the licensee’s profession through ongoing committee monitoring. A participant will enter into a contract with a committee and agree to adhere to all terms and agreements set forth in the contract. Failure to comply with the provisions of the contract gives the committee the authority to make a referral to the board for possible disciplinary action. If a contract provision is breached that poses an immediate risk to the public, the committee may place immediate practice restrictions on the licensee.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are costs to a licensee to participate in the impaired licensee review committee program (program). The licensee has to have a diagnosed impairment, which is often determined through a

substance abuse or other type of evaluation to assess the potential impairment. This evaluation is done at the expense of the licensee. The terms of the contract set forth requirements the licensee must meet to participate in the program, which may include therapy, random drug screens, Alcoholics Anonymous meetings, etc. Participation in these requirements is at the expense of the licensee.

The Department will bear costs associated with this rule as well as costs for Department staff to review applications for the program and monitor the licensee's participation. Department staff salaries to support the work of the professional licensing board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover operation costs for the regulated professional licensing boards.

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

The program gives licensees an opportunity to receive the treatment they need and be rehabilitated. This proposed rule sets licensees who complete the program up to safely and successfully continue their profession, benefiting the public and the licensee alike.

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

- Quantitative description of impact:

If a licensee participates in the program, the licensee will have associated costs, such as evaluations, therapy and/or treatment and potential loss of income. Depending on the licensee's impairment, a professional licensing board may find that practice restrictions are necessary until the licensee is rehabilitated, which could limit the licensee's ability to work in the profession for a period of time. However, the purpose of the program is to limit the disruption in the licensee's profession while ensuring the public is receiving safe services. The program is confidential, which allows the licensee to seek rehabilitation without the licensee's business being affected by public knowledge of the impairment.

- Qualitative description of impact:

This proposed rule provides for a confidential program to assist professionals who may be struggling with addiction, mental health or physical disabilities. Substantively, the goal of the terms of participation is to ensure that a licensee is safe to practice the licensee's profession. The program provides ongoing monitoring with the committee adding accountability for the licensee. Failure to comply with the requirements of the program could result in referral to a professional licensing board for disciplinary action. A licensee who successfully completes the program is able to regain full license privileges.

3. Costs to the State:

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

Costs to the Department include the Department staff time needed to review applications and monitor participants of the program. Staff salaries to support the work of a professional licensing board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Costs associated with this proposed rule are paid by individual licensees, not the State. Staff salaries to support the work of a professional licensing board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the professional licensing boards.

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

The Department believes the costs of the program are justified by the benefits received. The program allows a licensee an avenue outside of discipline to address areas of impairment while being monitored by a professional group. Without this confidential program, a licensee would likely be subject to discipline, lose the licensee's license to practice or potentially cause harm to the public while practicing while impaired.

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

The program is less restrictive than discipline. The program is not punitive, and it is confidential. The program provides the ability for a licensee dealing with impairment to heal privately while simultaneously being monitored by a qualified group of professionals to ensure the public is protected. The costs of the program are individually based and determined by the evaluations and needs of the licensee. At this time, the Department has not identified a less restrictive alternative for the impaired practitioner program.

6. Alternative methods considered by the agency:

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

At this time, the Department has not identified any alternative methods for the impaired practitioner program.

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

The Department believes this program is needed to provide options for impaired professionals to rehabilitate themselves and be able to safely remain in their profession. This program provides licensees with a less restrictive option over discipline. A licensee can participate confidentially and receive the help the licensee needs to be successful in the licensee's profession.

Small Business Impact

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

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

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

This proposed rule provides an alternative for small business licensees who may be encountering impairment. Instead of being subject to discipline procedures, the licensee may enter the confidential program to seek assistance. When the licensee graduates from the program, the licensee will regain full privileges of licensing. Disciplinary proceedings are often costly to the licensee to hire legal counsel and can result in suspension or revocation of the license. This program allows the licensee to maintain the license and be monitored to ensure safe practice for all Iowans.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 12 and adopt the following new chapter in lieu thereof:

CHAPTER 12 IMPAIRED LICENSEE REVIEW COMMITTEES

193—12.1(272C) Impaired licensee review committee. Pursuant to the authority of Iowa Code section 272C.3(1) “k,” all the professional licensing boards as defined in 191—Chapter 1 may establish an impaired licensee review committee.

12.1(1) Definitions. The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

“Committee” means the impaired licensee review committee.

“Contract” means the written document establishing the terms for participation in the impaired licensee program prepared by the committee.

“Impairment” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

“Licensee” means a person licensed under Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C.

“Self-report” means the licensee’s providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board’s receiving a complaint or report alleging the same from a second party.

12.1(2) Purpose. The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments or who are referred to the committee by the board.

12.1(3) Composition of the committee. The chairperson of each board will appoint the members of the committee for that board. The membership of the committee includes, but is not limited to:

- a. One licensee, registered under the applicable Iowa Code chapter regulated by the board;
- b. One public member of the board;
- c. One or more licensed professionals with expertise in substance abuse/addiction treatment programs or other applicable impairment.

The board may, alternatively, contract with an established impaired licensee review committee of another board, inside or outside the department of inspections, appeals, and licensing, if deemed in the best interest of the licensee or the public.

12.1(4) Eligibility. To be eligible for participation in the impaired licensee recovery program, a licensee will need to meet all of the following criteria:

- a. The licensee needs to self-report an impairment or suspected impairment directly to the office of the board or be referred to the committee by the board;
- b. The licensee cannot have engaged in the unlawful diversion or distribution of controlled substances, or illegal substances;
- c. At the time of the self-report, the licensee cannot already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession, although the existence of such an order cannot prevent the board from making a referral when deemed in the best interest of the licensee and the public;
- d. The licensee has not caused harm or injury to a client;
- e. The licensee has not been subject to a civil or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of the profession;
- f. The licensee has provided truthful information and fully cooperated with the board or committee.

12.1(5) Meetings. The committee will meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

12.1(6) Terms of participation. A licensee will agree to comply with the terms for participation in the impaired licensee program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period will be established by the committee and communicated to the licensee in writing.

12.1(7) Noncompliance. Failure to comply with the provisions of the agreement obligates the committee to make immediate referral of the matter to the board for the purpose of disciplinary action.

12.1(8) *Practice restrictions.* The committee may impose restrictions on the licensee's practice as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is obligated to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee will refer the licensee to the board for appropriate action.

12.1(9) *Limitations.* The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired licensee program. Participation in the program under the auspices of the committee cannot relieve the board of any duties and cannot divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant will be referred to the board for appropriate action. A violation of a contract is a ground for licensee discipline.

12.1(10) *Confidentiality.* The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program cannot be disclosed to the public. Participation in the impaired licensee program under the auspices of the committee is not a matter of public record.

This rule is intended to implement Iowa Code chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 14
“Licensure by Verification or Work Experience”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 272C

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) +1 402.921.2210
PIN: 301 728 068#
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

These proposed rules provide alternative pathways for licensure. The alternative options streamline the process for individuals who are licensed in another state to be licensed in Iowa. The requirements set out in these rules ensure licensees have proper skills to practice. The rules provide for certain criteria to be assessed, including prior discipline, proof of residency and work experience, in order to protect the public.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees and the Department will bear costs associated with this proposed rulemaking. Licensees incur fees for licensure upon application in the State of Iowa. Those fees are set by rule. A professional licensing board would utilize Department staff members to process the applications, respond to inquiries and manage phone calls. Department staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the professional licensing boards.

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

Licensees benefit from this proposed rulemaking because it provides an alternative path for those licensees who already have a license in another state. The licensees who qualify for the license by verification are able to apply for an Iowa license without going through all of the steps of the initial application process. This process saves the licensee time and expense.

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

- Quantitative description of impact:

About ten licenses have been granted by the professional licensing boards defined in 193—Chapter 1.

- Qualitative description of impact:

In order to regulate and license professions as directed in statute, base standards for licensure are critical to protecting public safety. These proposed rules allow for individuals with licenses in other states to apply for licensure in Iowa through a streamlined verification process. The process allows more professionals for the public to access needed services.

3. Costs to the State:

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

Costs to the Department include the Department staff time needed to process license applications as well as the costs associated with having a professional licensing board meeting as the applications are reviewed by the board. Department staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Department staff salaries to support the work of a professional licensing board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the professional licensing boards.

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

While there are no costs to the public related to this proposed rulemaking, there are costs to the licensee. Licensees must pay licensing application fees in order to utilize these rules. Licensing fees vary depending on the profession and are set by separate rules. The Department believes the benefits justify the costs associated with license application. In order to regulate and license professions, base standards have to be set to ensure public safety. The licensing fees paid through these rules, as well as any other licensing application, are paid to the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. This Fund covers the operations of the professional licensing boards.

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

The Department has not identified a less restrictive alternative to the requirements for licensure by verification since these rules already reflect a less restrictive alternative for the licensing process.

6. Alternative methods considered by the agency:

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

The Department has not identified a less restrictive alternative to the requirements for licensure by verification since these rules already reflected a less restrictive alternative for the licensing process.

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

These proposed rules implement recent legislation, 2020 Iowa Acts, House File 2627. The Department was not able to identify a less restrictive alternative that would also ensure public safety. These rules provide for a less restrictive method to licensing.

Small Business Impact

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

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

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

These proposed rules benefit a licensee who may own or work for small businesses because it provides a more efficient means for a licensee to obtain the licensee’s Iowa license if the licensee is already licensed in another state and meets certain qualifications. This process cuts down on the time and expenses the small business may have to wait to engage in business in Iowa.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14
LICENSURE BY VERIFICATION OR WORK EXPERIENCE

193—14.1(272C) Definitions.

“*Board*” means an examining board or commission as defined in 193—Chapter 1.

“*Issuing jurisdiction*” means any state, commonwealth, or municipality; the District of Columbia, or other insular territory of the United States.

“*License*” or “*licensure*” means any license, registration, certificate, or permit that may be granted by an examining board or commission as defined in 193—Chapter 1.

193—14.2(272C) Licensure by verification. Licensure by verification is available in accordance with the following:

14.2(1) Eligibility. A person may seek licensure by verification if the person is licensed in at least one other jurisdiction that has a scope of practice substantially similar to that of Iowa.

14.2(2) Board application. The applicant needs to submit the following:

- a. A completed application for licensure by verification.
- b. Payment of the application fee.
- c. Completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check, if required for initial licensure by the board.
- d. A verification form completed by the licensing authority in the jurisdiction that issued the applicant’s license, verifying that the applicant’s license in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form needs to be sent directly from the licensing authority to the board.
- e. A copy of the complete criminal record, if the applicant has a criminal history.
- f. A copy of relevant disciplinary documents, if another jurisdiction has taken disciplinary action against the applicant.

g. Copies of relevant laws setting forth the scope of practice in the other state.

14.2(3) *Applicants with prior discipline.* If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person who has had a license revoked, or who has voluntarily surrendered a license, in another jurisdiction is ineligible for licensure by verification.

14.2(4) *Applicants with pending licensing complaints or investigations.* If an applicant is currently the subject of a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

14.2(5) *Determination by board.* The board will make the determination of whether to issue a license under this rule based on information supplied by the applicant in the application and on such additional information as the board may acquire, including information or verification from other jurisdictions.

193—14.3(272C) Applicants with work experience in jurisdictions without licensure requirements.

14.3(1) *Work experience.* An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not need a professional license to practice in the profession may be considered to have met any educational and training requirements if the person has at least three years of work experience with a scope of practice substantially similar to that of the profession for which a license in Iowa is sought. The three years of work experience needs to be within the four years preceding the date of application for initial licensure. The applicant will need to satisfy all other requirements, including passing any required examinations, to receive a license.

14.3(2) *Required documentation.* An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements carries the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of Iowa residency, which may include:

- (1) Residential mortgage, lease, or rental agreement;
- (2) Utility bill;
- (3) Bank statement;
- (4) Paycheck or pay stub;
- (5) Property tax statement;
- (6) A document issued by the federal or state government; or
- (7) Any other board-approved document that reliably confirms Iowa residency.

b. Proof of three or more years of work experience within the four years preceding the application for licensure, which may include:

- (1) A letter from the applicant's prior employer documenting the dates of employment;
- (2) Paychecks or pay stubs;
- (3) If self-employed, business documents filed with the secretary of state; or
- (4) Any other board-approved evidence of sufficient work experience.

c. Proof that the work experience was in a practice with a scope of practice substantially similar to that for the license sought in Iowa, which includes:

- (1) A written statement by the applicant detailing the scope of practice; and
- (2) Business or marketing materials detailing the services provided.

These rules are intended to implement Iowa Code chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193—Chapter 15
“Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C and 546
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 272C and 546 and 2020
Iowa Acts, House File 2627

Public Hearing

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

November 21, 2023
3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) +1 402.921.2210
PIN: 301 728 068#
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Purpose and Summary

This proposed rulemaking clarifies the pathway to potential licensure for individuals with criminal convictions. The proposed rules ensure a streamlined pathway while protecting the public through criteria that allows a professional licensing board to review the complete criminal record, evidence of rehabilitation, and other information when making a determination on eligibility for licensure. This rule implements recent legislation, 2020 Iowa Acts, House File 2627.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Applicants and the Department will bear the costs of this rulemaking. Applicants have the option to petition a professional licensing board for an eligibility waiver prior to completing a license application. The purpose of the eligibility waiver is to inform the applicant of whether the individual’s convictions are disqualifying offenses. There is a \$25 fee associated with the eligibility waiver. The Department employs staff to process the waivers and applications. Department staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

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

Applicants greatly benefit from this proposed rulemaking. While the Department is unable to pull statistics from the licensing database on the number of individuals with a criminal conviction, multiple individuals with prior criminal convictions have been licensed. These rules, as directed by legislation, open up career opportunities for individuals with criminal convictions that may not have previously existed.

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

- Quantitative description of impact:

While there are no known quantitative costs to the public, the applicant does incur costs related to licensing and eligibility. An individual may petition a professional licensing board for an eligibility waiver prior to completing the licensing application. The board uses the waiver process to determine if the individual's criminal convictions are disqualifying offenses. There is a \$25 fee associated with the eligibility waiver. Licensing fees depend on the profession.

Department staff is needed to process license applications and eligibility waiver petitions. Department staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover the operations of the professional licensing boards.

- Qualitative description of impact:

These proposed rules, as directed by legislation, open up career opportunities for individuals with criminal convictions who may not have been able to secure a license in the past. The rules provide some discretion to a professional licensing board to determine whether an applicant has been rehabilitated to a point where the public would be safe with the applicant receiving a license in a particular field.

3. Costs to the State:

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

The Department incurs costs in the form of staff to support a professional licensing board with the license applications and eligibility waivers. Department staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenue from these proposed rules. The rules allow more individuals to receive a professional license, which creates more job opportunities for those individuals. Having more potential and more opportunities allows the licensee to contribute back to the state revenue.

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

The Department believes the intended benefit of these proposed rules outweighs any potential costs of the rules. The intended benefit is being achieved because this chapter is allowing a pathway for those with criminal convictions to obtain professional licenses that such individuals may not have otherwise been able to obtain. The Department believes it needs to have a streamlined approach to review an applicant's criminal convictions and potential rehabilitation to determine whether the past criminal convictions would have a negative impact on the applicant obtaining a license. While the Department does not have a statistic for how many people have been able to obtain a license with a criminal conviction, several licensees have utilized this chapter to be able to obtain a license and have opportunities for jobs. Without these rules, some individuals would be automatically excluded from practicing in certain professions.

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

The purpose of these proposed rules is to allow individuals with past criminal convictions the opportunity to petition a professional licensing board for a determination on whether the individual

is able to obtain a license. The rules also provide a streamlined process for the board to review past criminal convictions and determine whether or not a license should be granted based on the nature of the criminal conviction and the potential rehabilitation. The rules provide a less intrusive method to determine whether an individual can obtain a license through the petition for eligibility waiver. The waiver process allows individuals to apply for a determination just on the criminal convictions prior to filing for the license application. The cost of the waiver is \$25, whereas the cost for license application is much more.

6. Alternative methods considered by the agency:

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

The Department has not identified a less restrictive alternative to the requirements for use of criminal convictions in eligibility determinations and initial licensing decisions since these rules set the pathway for licensure of an individual with criminal convictions. Included in the proposed rules is the option for applicants to petition a professional licensing board for an eligibility determination prior to their initial license application. This allows for the applicant to pay only a fraction of the cost (\$25) as opposed to the entire licensing fee prior to a finding of whether the applicant's criminal convictions will disqualify the applicant from receiving a license.

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

Alternative methods were not considered because this rule is required by statute as enacted by 2020 Iowa Acts, House File 2627.

Small Business Impact

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

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

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

The eligibility waiver allows a small business applicant to pay a small fee for a professional licensing board to determine whether the applicant's criminal convictions are disqualifying offenses that would prevent the applicant from obtaining a license. The eligibility waiver is a tool used by the applicant prior to completing the full licensing process, which has a much higher fee.

Text of Proposed Rulemaking

ITEM 1. Rescind 193—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15

USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL LICENSING DECISIONS

193—15.1(272C) Definitions. For the purposes of these rules, the following definitions apply:

“Complete criminal record” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“Conviction” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“Disqualifying offense” means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

“License” means any license or registration issued by a board.

193—15.2(272C) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to rule 193—15.3(272C), the applicant’s convictions will be reviewed when the board receives a completed license application.

15.2(1) An applicant will disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

15.2(2) An applicant with one or more convictions will submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

15.2(3) An applicant will submit as a part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

15.2(4) The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

15.2(5) An applicant with one or more disqualifying offenses who has been found rehabilitated will need to still satisfy all other requirements for licensure.

15.2(6) Any application fees paid will not be refunded if the license is denied.

193—15.3(272C) Eligibility determination.

15.3(1) An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

15.3(2) To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner will submit all of the following:

- a. A completed petition for eligibility determination form;
- b. The complete criminal record for each of the petitioner’s convictions;
- c. A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should find the petitioner rehabilitated;
- d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- e. Payment of a nonrefundable fee of \$25.

193—15.4(272C) Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board’s written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board’s rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board’s written decision will become a final order.

15.4(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered is a proposed decision.

15.4(2) The contested case hearing is closed to the public and the board's review of a proposed decision occurs in closed session.

15.4(3) The office of the attorney general will represent the board's initial ineligibility determination or license denial and will have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof will shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

15.4(4) A petitioner or applicant will need to appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding will be in accordance with Iowa Code chapter 17A.

193—15.5(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

These rules are intended to implement Iowa Code chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 4
“Board Administrative Processes”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 21, 147, 252J, 272C, and 272D
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 21, 147, 252J,
272C, and 272D

Public Hearing

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

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

The rules publicly outline administrative processes of the professional licensing boards within DIAL — Licensing Division. This includes expectations of licensees to change their name and address, order duplicate certificates, and provide continuing education information in an audit, as well as board order authority.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Costs are not generally incurred by the public in relation to this rulemaking. Licensees may incur costs related to initial and renewal licensing fees, duplicate certificates, or completing a physical, mental, substance abuse, or clinical competency examination as ordered by a board.

Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The benefit of the rulemaking is achieved as professional licensing board administrative processes and expectations of licensees are established within the rulemaking in accordance with statute. This

work is done with a focus on protecting the health and safety of the public who receive services and/or care from licensed professionals.

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

- Quantitative description of impact:

The legacy Professional Licensure Division encompasses 19 boards regulating approximately 61,000 professional licensees. In order to regulate the professions as directed in the Iowa Code, administrative processes are needed to properly issue licenses, investigate complaints and run audits on compliance with board rules.

- Qualitative description of impact:

Iowa statute requires the regulation and licensing of certain professions to ensure the health and safety of the public who are receiving services and care from the licensed professionals. This rulemaking provides administrative processes for the boards to ensure rules are being utilized and complied with by licensees.

3. Costs to the State:

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

Costs to the agency are the costs for staff needed to support the administrative work of the boards. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues from this rulemaking.

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

Costs are not generally incurred by the public related to this rulemaking. Licensees may incur costs related to initial and renewal licensing fees, duplicate certificates, or completing a physical, mental, substance abuse, or clinical competency examination as ordered by a board. The benefit of the rulemaking is achieved as board administrative processes and expectations of licensees are established within the rulemaking in accordance with statute.

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

DIAL — Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The Department has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking.

6. Alternative methods considered by the agency:

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

DIAL — Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The Department has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking.

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

DIAL — Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The Department has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking.

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

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

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

The rules publicly outline administrative processes of the professional licensing boards. These administrative rules apply equally to all businesses. If a small business identifies a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it may utilize the Department’s established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
BOARD ADMINISTRATIVE PROCESSES

645—4.1(17A) Definitions.

“*License*” means a license to practice the specific practice governed by one of the boards defined in this chapter.

“*Licensee*” means a person licensed to practice the specific practice governed by one of the boards defined in this chapter.

645—4.2(17A) Purpose of board. The purpose of each professional licensing board is to administer and enforce the provisions of Iowa Code chapters 17A, 21, 147, and 272C and the practice-specific provisions in Iowa Code chapters 148A, 148B, 148C, 149, 151, 152A, 152B, 152C, 152D, 154, 154A, 154B, 154C, 154D, 154E, 155, 156, 157 and 158 applicable to each board. The mission of each professional licensing board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and rules of each board. Responsibilities of each professional licensing board include, but are not limited to:

- 4.2(1) Licensing qualified applicants by examination, renewal, endorsement, and reciprocity.
- 4.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.
- 4.2(3) Imposing discipline on licensees as provided by statute or rule.

645—4.3(17A,147,272C) Organization of board and proceedings.

4.3(1) Each professional licensing board is composed of members appointed by the governor and confirmed by the senate as defined in Iowa Code chapter 147.

4.3(2) Each board elects a chairperson and vice chairperson from its membership at the first meeting after April 30 of each year.

4.3(3) A majority of the members of each board constitutes a quorum.

4.3(4) Board meetings are governed in accordance with Iowa Code chapter 21.

4.3(5) Each professional licensing board has the authority to:

- a. Develop and implement continuing education rules to ensure the continued competency of individuals licensed by the board.
- b. Establish fees.
- c. Establish committees of the board.
- d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session. The records shall be stored securely in the board office.
- e. Investigate alleged violations of statutes or rules that relate to the practice of licensees upon receipt of a complaint or upon the board's own initiation.
- f. Initiate and impose licensee discipline.
- g. Monitor licenses that are restricted by a board order.
- h. Establish and register peer reviewers.
- i. Refer complaints to one or more registered peer reviewers for investigation and review. The peer reviewers will review cases and recommend appropriate action.
- j. Perform any other functions authorized by a provision of law.

645—4.4(17A) Name and address changes.

4.4(1) Notice of change of address. Each licensee shall notify the board of a change of the licensee's current mailing address within 30 days after the change of address occurs.

4.4(2) Notice of change of name. Each licensee shall notify the board in writing of a change of name within 30 days after changing the name.

645—4.5(147) Duplicate certificate. A duplicate certificate is required if the current certificate is lost, stolen or destroyed. Duplicate certificates may be purchased online.

645—4.6(17A,147,272C) License denial.

4.6(1) When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing and cite the reasons for which the application was denied.

4.6(2) An applicant who has been denied licensure by the board may appeal the denial and request a hearing by submitting a request in writing within 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing. The hearing and subsequent procedures will be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

645—4.7(272C) Audit of continuing education. The board may select licensees for audit following license renewal.

4.7(1) If selected for audit, the licensee will provide certificates of completion of continuing education within 30 days of notice. The documents will contain the course date, title, contact hours, sponsor and licensee's name. Extension of time may be granted on an individual basis.

4.7(2) All licensees must retain continuing education certificates for two years after the renewal.

4.7(3) If the submitted certificates are incomplete or unsatisfactory, the licensee may submit make-up credit to cover the deficit. The deadline for make-up credit is 90 days from the date of the notice of deficit.

645—4.8(272C,83GA,SF2325) Automatic exemption. A licensee is exempt from the continuing education requirement during the license biennium when the licensee:

1. Served active duty in the military service; or
2. Resided in another state or district having continuing education requirements; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States.

645—4.9(272C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption providing an

extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application.

4.9(1) The board may grant an extension of time to fulfill the continuing education requirement.

4.9(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

4.9(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

645—4.10(147,272C) Order for physical, mental, substance abuse or clinical competency examination. If the board has probable cause, a licensee may be required to submit to a physical, mental, substance abuse or clinical competency examination at the licensee's expense.

4.10(1) *Content of order.* A board order for a physical, mental, substance abuse or clinical competency examination shall include the following items:

a. A description of the type of examination.

b. The amount of time the licensee has to complete the examination.

c. A statement indicating the licensee sign necessary releases for the board to communicate with the examiner of the evaluation or treatment facility.

d. A statement that the licensee communicate with the board regarding the status of the examination.

e. A statement that the licensee will have the examiner provide the examination results directly to the board within a specified period of time.

4.10(2) *Alternatives.* Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request that the board approve an alternative examiner or treatment facility. The board in its discretion shall determine whether to grant the request.

4.10(3) *Objection to order.* A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. A licensee who fails to timely file a request for hearing to object to an examination order waives any future objection to the examination order in the event formal disciplinary charges are filed for failure to comply with the examination order or on any other grounds. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned to maintain the licensee's confidentiality.

4.10(4) *Closed hearing.* Any hearing on an objection to the examination order shall be closed pursuant to Iowa Code section 272C.6(1).

4.10(5) *Order and reports confidential.* An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4). However, all investigative information regarding the examination order shall be provided to the licensee in the event the licensee files an objection, under subrule 4.15(3), in order to allow the licensee an opportunity to prepare for hearing.

4.10(6) *Admissibility.* In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

4.10(7) *Failure to submit.* Failure of a licensee to submit to a board-ordered physical, mental, substance abuse or clinical competency examination constitutes a violation of the rules of the board and is grounds for disciplinary action.

645—4.11(252J,272D) Noncompliance rules regarding child support and nonpayment of state debt.

4.11(1) *Child support noncompliance.* The board hereby adopts by reference 641—Chapter 192, “Child Support Noncompliance,” Iowa Administrative Code.

4.11(2) *Nonpayment of state debt.* The board hereby adopts by reference 641—Chapter 194, “Nonpayment of State Debt,” Iowa Administrative Code.

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 252J, 272C and 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 5
“Fees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A, 147, and 272C

Public Hearing

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

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

The purpose of this proposed chapter is to establish fees for licensed professions. This chapter provides fees for the following boards: Hearing Aid Specialist Board, Speech Pathology and Audiology Board, Nursing Home Administrator Board, Optometry Board, Sign Language Interpreters and Transliterators Board, Barbering and Cosmetology Arts Sciences Board, Physical and Occupational Therapy Board, Athletic Training Board, Mortuary Science Board, Physician Assistants Board, Chiropractic Board, Behavioral Science Board, Psychology Board, Social Work Board, Podiatry Board, Massage Therapy Board, Dietetics Board and the Respiratory Care Board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Costs are not generally incurred by the public related to Chapter 5. Licensees incur costs through the licensing fees as established in this chapter, which include fees related to applications for initial licensing, renewal of licenses, late fees for renewing licenses, temporary licenses (if permitted by statute), reactivation of a license, purchasing a duplicate certificate, and returned check fees.

The professional licensing fees go to the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557, to support the work of the boards. Fees provide support for all functions that are within the authority of boards including licensing, investigations, continuing education, administrative support to boards including rulemaking and rule waivers, board discipline, outreach to professional

associations and other members of the public, disciplinary hearing fees, examination fees (if applicable) and verification of license fee.

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

Licensees benefit from this chapter because it establishes set amounts for licensing fees for each profession.

DIAL benefits because the licensing fees are paid to the Fund to cover the costs of the operations of the regulated professional licensing boards.

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

- Quantitative description of impact:

Licensees must pay a fee at the time of initial application for license as well as at renewal. The licensing fees are paid into the Fund, which funds the operations of the boards. A cost comparison of license fees to nearby states can be found below.

| License Type | Initial Fee IA | Initial Fee IL | Initial Fee MN | Initial Fee MO | Initial Fee NE |
|------------------------------------|----------------|----------------|----------------|----------------|----------------|
| Athletic Training | \$120 | \$200 | \$183 | \$25 | \$117 |
| Barbering | \$60 | \$30 | \$160 | \$20 | \$220 |
| Barbering Instructor | \$60 | \$156 | \$180 | \$20 | \$100 |
| Behavior Analyst | \$120 | unknown | unknown | \$150 | unknown |
| Marital and Family Therapist | \$120 | \$100 | \$125 | \$100 | \$50 |
| Mental Health Counselor | \$120 | \$100 | \$125 | \$100 | \$50 |
| Chiropractic | \$270 | \$500 | \$250 | \$200 | \$144 |
| Cosmetologist | \$60 | \$30 | \$155 | \$146 | \$95 |
| Electrologist | \$60 | \$125 | unknown | unknown | \$95 |
| Esthetician | \$60 | \$30 | \$155 | N/A | \$95 |
| Manicurist | \$60 | \$80 | \$285 | \$210 | \$148 |
| Nail Technician | \$60 | \$30 | \$155 | \$30 | \$50 |
| Cosmetology Instructor | \$60 | \$30 | \$195 | \$20 | \$50 |
| Dietician | \$120 | \$100 | \$150 | \$50 | unknown |
| Hearing Aid Specialists | \$156 | \$200 | \$750 | \$250 | \$165 |
| Funeral Director | \$120 | \$100 | \$200 | \$150 | \$90 |
| Massage Therapist | \$120 | \$175 | not required | \$125 | \$110 |
| Nursing Home Administrators | \$120 | \$180 | \$150 | \$150 | \$166 |
| Optometrist | \$300 | \$500 | \$160 | \$225 | \$166 |
| Physician Assistant | \$120 | \$50 | \$120 | \$25 | \$150 |
| Podiatrist | \$400 | \$400 | \$600 | \$200 | \$131 |
| Orthotist, Prosthetist, Pedorthist | \$400 | \$400 | \$600 | unknown | unknown |
| Psychologist | \$120 | \$50 | \$500 | \$150 | \$183 |
| Occupational Therapist | \$120 | \$25 | \$185 | \$30 | \$120 |

| | | | | | |
|--|-----------|-----------|-----------|-----------|-----------|
| Physical Therapist | \$120 | \$100 | \$60 | \$25 | \$133 |
| Respiratory Care Practitioner | \$75 | \$100 | \$190 | \$40 | \$118 |
| Sign Language Interpreter and Transliterater | \$120 | \$175 | unknown | \$75 | \$150 |
| Audiologist | \$120 | \$90 | \$544 | \$25 | \$140 |
| Speech Pathologist | \$120 | \$90 | \$219 | \$25 | \$140 |
| Social Worker Bachelor's Level | \$120 | \$50 | \$81 | \$60 | \$125 |
| Social Worker Independent Level | \$120 | unknown | \$108 | unknown | unknown |
| Social Worker Master's Level | \$120 | \$50 | \$239 | \$60 | \$125 |
| | IA | IL | MN | MO | NE |
| Average Initial Licensing Fee | \$133 | \$142 | \$244 | \$96 | \$122 |

NOTE: Supplemental fees (e.g., examination fees, background check fees) vary across state lines. The figures in this comparative analysis represent only the licensing fee to the extent that it could be isolated from the total cost of initial licensure.

| License Type | Renewal Fee IA | Renewal Fee IL | Renewal Fee MN | Renewal Fee MO | Renewal Fee NE |
|------------------------------|----------------|----------------|----------------|----------------|----------------|
| Athletic Training | \$60 | \$100 | \$100 | \$25 | \$59 |
| Barbering | \$30 | \$13 | \$80 | \$15 | \$60 |
| Barbering Instructor | \$30 | \$25 | \$80 | \$15 | \$50 |
| Behavior Analyst | \$60 | unknown | unknown | \$75 | unknown |
| Marital and Family Therapist | \$60 | \$60 | \$125 | \$88 | \$25 |
| Mental Health Counselor | \$60 | \$60 | \$125 | \$88 | \$25 |
| Chiropractic | \$60 | \$167 | \$200 | \$63 | \$72 |
| Cosmetologist | \$30 | \$25 | \$38 | \$15 | \$59 |
| Electrologist | \$30 | \$31 | unknown | unknown | unknown |
| Esthetician | \$30 | \$25 | \$33 | unknown | \$59 |
| Manicurist | \$30 | \$25 | \$38 | \$15 | unknown |
| Nail Technician | \$30 | \$13 | \$48 | \$25 | \$25 |
| Cosmetology Instructor | \$30 | \$25 | \$48 | \$15 | \$25 |
| Dietician | \$60 | \$50 | \$75 | \$10 | N/A |
| Hearing Aid Specialists | \$30 | \$100 | \$750 | \$200 | \$83 |
| Funeral Director | \$60 | \$25 | \$200 | \$75 | \$45 |
| Massage Therapist | \$30 | \$88 | not required | \$50 | \$55 |

| | | | | | |
|--|-----------|-----------|-----------|-----------|-----------|
| Nursing Home Administrators | \$30 | \$25 | \$113 | \$75 | \$83 |
| Optometrist | \$72 | \$200 | \$130 | \$75 | \$73 |
| Physician Assistant | \$60 | \$20 | \$135 | \$25 | \$55 |
| Podiatrist | \$200 | \$200 | \$300 | \$100 | \$66 |
| Orthotist, Prosthetist, Pedorthist | \$200 | \$125 | \$300 | unknown | unknown |
| Psychologist | \$85 | \$40 | \$250 | \$150 | \$92 |
| Occupational Therapist | \$30 | \$20 | \$15 | \$15 | \$60 |
| Physical Therapist | \$30 | \$30 | \$60 | \$25 | \$67 |
| Respiratory Care Practitioner | \$38 | \$60 | \$90 | \$15 | \$59 |
| Sign Language Interpreter and Transliterator | \$60 | \$150 | unknown | \$90 | \$75 |
| Audiologist | \$48 | \$50 | \$255 | \$17 | \$70 |
| Speech Pathologist | \$48 | \$50 | \$100 | \$17 | \$70 |
| Social Worker Bachelor's Level | \$36 | \$30 | \$41 | \$29 | \$63 |
| Social Worker Independent Level | \$72 | unknown | unknown | unknown | unknown |
| Social Worker Master's Level | \$60 | \$30 | \$119 | \$29 | \$63 |
| | IA | IL | MN | MO | NE |
| Average Renewal Licensing Fee | \$56 | \$62 | \$143 | \$51 | \$59 |

NOTE: Renewal schedules vary across professions and across state lines. The figures in this comparative analysis represent only the licensing renewal fee to the extent that it could be isolated. Additionally, the fees have been adjusted to the cost equivalent of one year in order to account for differing renewal schedules.

- Qualitative description of impact:

A review of licensing and renewal fees in surrounding states shows that Iowa's fees are generally in line with the other states. The fees are necessary to provide funds to support the board operations so that the boards can ensure Iowans receive competent and safe services.

3. Costs to the State:

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

Staff salaries to support the work of the boards are covered by the Fund. There are currently 16.5 full-time equivalent (FTE) positions that support the work of the 19 boards contained in this chapter at an annual budget of roughly \$2 million. These 19 boards license and regulate over 61,000 licensees. Staff process licenses, provide administrative support to boards and the decisions they are authorized to make pursuant to the Iowa Code, investigate complaints, assist with disciplinary action when needed, and monitor licensees under board order or in confidential health monitoring programs. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues from this rulemaking. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees are paid into the fund to cover the operation costs of the boards.

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

The costs of licenses vary depending on the profession. The licensing fees are paid into the Fund to cover the costs of operation of the professional licensing boards. An alternative to licensing fees would be reducing or eliminating the fee or license requirement. Without the licensing fee, the boards would not have the financial resources necessary to carry out their work to protect the public's health and safety.

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

A less restrictive alternative would be to lower licensing fees or eliminate licensure for specific professions. Less restrictive forms of regulation include a registration, certification or registry. There are typically fewer requirements to a registration, certification or registry, which means operational costs, and therefore fees, can be lowered. While these are options that exist for consideration, the boards that regulate these professions believe that Iowa's regulatory scheme, as it exists today, is important and necessary because it provides safeguards to the public. FY 2024 will be the first fiscal year that professional licensing board fees are collectively pooled in the Fund to support the cost of regulating the professions. This new model may allow for additional assessment of licensing board budgets and operational needs.

Additionally, the Boards and Commissions Review Committee is currently assessing the efficiency and effectiveness of all boards and commissions, including those in the DIAL Licensing Division. Action items from this committee could trigger a review of fees in specific areas.

The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards.

6. Alternative methods considered by the agency:

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

Staff held conversations about alternative methods and less restrictive forms of regulation such as a registration, certification, or registry. There are typically fewer requirements to a registration, certification or registry, which means operational costs, and therefore fees, can be lowered. While these are options that exist for consideration, the boards that regulate these professions believe that Iowa's regulatory scheme, as it exists today, is important and necessary because it provides safeguards to the public.

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

The boards that regulate these professions believe that Iowa's regulatory scheme, as it exists today, is important and necessary because it provides safeguards to the public.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

The boards believe the fees for licensing should be the same for each licensee in a particular profession. If the individual licensee finds a rule to be overly burdensome where the goals of which could be achieved in a manner that results in less impact on the small business, the licensee utilizes DIAL's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
FEES

645—5.1(147,152D) Athletic training license fees. All fees are nonrefundable.

- 5.1(1) License fee for license to practice athletic training is \$120.
- 5.1(2) Temporary license fee for license to practice athletic training is \$120.
- 5.1(3) Biennial license renewal fee for each biennium is \$120.
- 5.1(4) Late fee for failure to renew before expiration is \$60.
- 5.1(5) Reactivation fee is \$180.
- 5.1(6) Duplicate or reissued license certificate fee is \$20.
- 5.1(7) Verification of license fee is \$20.
- 5.1(8) Returned check fee is \$25.
- 5.1(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

645—5.2(147,158) Barbering license fees. All fees are nonrefundable.

- 5.2(1) License fee for an initial license to practice barbering, license by endorsement, license by reciprocity or an instructor's license is \$60.
- 5.2(2) Biennial renewal fee for a barber license or barber instructor license is \$60.
- 5.2(3) Temporary permit fee is \$12.
- 5.2(4) Practical examination fee is \$75.
- 5.2(5) Demonstrator permit fee is \$45 for the first day and \$12 for each day thereafter for which the permit is valid.
- 5.2(6) Barber school license fee is \$600.
- 5.2(7) Barber school annual renewal fee is \$300.
- 5.2(8) Barbershop license fee is \$72.
- 5.2(9) Biennial renewal fee for a barbershop license is \$72.
- 5.2(10) Late fee for failure to renew before expiration is \$60.
- 5.2(11) Reactivation fee for a barber license is \$120.
- 5.2(12) Reactivation fee for a barbershop license is \$132.
- 5.2(13) Reactivation fee for a barber school license is \$360.
- 5.2(14) Duplicate or reissued license certificate fee is \$20.
- 5.2(15) Verification of license fee is \$20.
- 5.2(16) Returned check fee is \$25.
- 5.2(17) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and chapter 158.

645—5.3(147,154D) Behavioral science license fees. All fees are nonrefundable.

5.3(1) License fee for license to practice marital and family therapy or mental health counseling is \$120.

5.3(2) Temporary license fee for license to practice marital and family therapy or mental health counseling is \$120.

5.3(3) License fee for license to practice as a behavior analyst or assistant behavior analyst is \$120. Behavior analyst and assistant behavior analyst licenses issued for less than one year shall not be subject to a renewal fee for the first renewal.

5.3(4) Biennial license renewal fee for each biennium is \$120.

5.3(5) Late fee for failure to renew before expiration is \$60.

5.3(6) Reactivation fee is \$180.

5.3(7) Duplicate or reissued license certificate fee is \$20.

5.3(8) Verification of license fee is \$20.

5.3(9) Returned check fee is \$25.

5.3(10) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 154D and 272C.

645—5.4(151) Chiropractic license fees. All fees are nonrefundable.

5.4(1) License fee for license to practice chiropractic is \$270.

5.4(2) Fee for issuance of annual temporary certificate is \$120.

5.4(3) Biennial license renewal fee is \$120.

5.4(4) Late fee for failure to renew before the expiration date is \$60.

5.4(5) Reactivation fee is \$180.

5.4(6) Duplicate or reissued license certificate fee is \$20.

5.4(7) Fee for verification of license is \$20.

5.4(8) Returned check fee is \$25.

5.4(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 151 and 272C.

645—5.5(147,157) Cosmetology arts and sciences license fees. All fees are nonrefundable.

5.5(1) License fee for license to practice cosmetology arts and sciences, license by endorsement, license by reciprocity, or an instructor's license is \$60.

5.5(2) Biennial license renewal fee for each license for each biennium is \$60.

5.5(3) Late fee for failure to renew before expiration is \$60.

5.5(4) Reactivation fee for applicants licensed to practice cosmetology is \$120; for salons, \$144; and for schools, \$330.

5.5(5) Duplicate or reissued license certificate fee is \$20.

5.5(6) Fee for verification of license is \$20.

5.5(7) Returned check fee is \$25.

5.5(8) Disciplinary hearing fee is a maximum of \$75.

5.5(9) Fee for license to conduct a school teaching cosmetology arts and sciences is \$600.

5.5(10) Fee for renewal of a school license is \$270 annually.

5.5(11) Salon license fee is \$84.

5.5(12) Biennial license renewal fee for each salon license for each biennium is \$84.

5.5(13) Demonstrator and not-for-profit temporary permit fee is \$42 for the first day and \$12 for each day thereafter that the permit is valid.

5.5(14) An initial fee or a reactivation fee for certification to administer microdermabrasion or utilize a certified laser product or an intense pulsed light (IPL) device is \$25 for each type of procedure or certified laser product or IPL device.

5.5(15) An initial fee or a reactivation fee for certification of cosmetologists to administer chemical peels is \$25.

This rule is intended to implement Iowa Code section 147.80 and chapter 157.

645—5.6(147,152A) Dietetics license fees. All fees are nonrefundable.

5.6(1) License fee for license to practice dietetics, license by endorsement, or license by reciprocity is \$120.

5.6(2) Biennial license renewal fee for each biennium is \$120.

5.6(3) Late fee for failure to renew before expiration is \$60.

5.6(4) Reactivation fee is \$180.

5.6(5) Duplicate or reissued license certificate fee is \$20.

5.6(6) Verification of license fee is \$20.

5.6(7) Returned check fee is \$25.

5.6(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 152A and 272C.

645—5.7(147,154A) Hearing aid specialists license fees. All fees are nonrefundable.

5.7(1) Application fee for a license to practice by examination, endorsement, or reciprocity is \$156.

5.7(2) Renewal of license fee is \$60.

5.7(3) Temporary permit fee is \$42.

5.7(4) Late fee is \$60.

5.7(5) Reactivation fee is \$120.

5.7(6) Duplicate or reissued license certificate fee is \$20.

5.7(7) Verification of license fee is \$20.

5.7(8) Returned check fee is \$25.

5.7(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapter 154A.

645—5.8(147) Massage therapy license fees. All fees are nonrefundable.

5.8(1) License fee for license to practice massage therapy is \$120.

5.8(2) Biennial license renewal fee for each biennium is \$60.

5.8(3) Temporary license fee for up to one year is \$120.

5.8(4) Late fee for failure to renew before expiration is \$60.

5.8(5) Reactivation fee is \$120.

5.8(6) Duplicate or reissued license certificate fee is \$20.

5.8(7) Verification of license fee is \$20.

5.8(8) Returned check fee is \$25.

5.8(9) Disciplinary hearing fee is a maximum of \$75.

5.8(10) Initial application fee for approval of massage therapy education curriculum is \$120.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

645—5.9(147,156) Mortuary science license fees. All fees are nonrefundable.

5.9(1) License fee for license to practice funeral directing is \$120.

5.9(2) Biennial funeral director's license renewal fee for each biennium is \$120.

5.9(3) Late fee for failure to renew before expiration is \$60.

5.9(4) Reactivation fee for a funeral director is \$180 and for a funeral establishment or cremation establishment is \$150.

5.9(5) Duplicate or reissued license certificate fee is \$20.

5.9(6) Verification of license fee is \$20.

5.9(7) Returned check fee is \$25.

5.9(8) Disciplinary hearing fee is a maximum of \$75.

5.9(9) Funeral establishment or cremation establishment fee is \$90.

5.9(10) Three-year renewal fee of funeral establishment or cremation establishment is \$90.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 156 and 272C.

645—5.10(147,155) Nursing home administrators license fees. All fees are nonrefundable.

- 5.10(1) License fee for license to practice nursing home administration is \$120.
- 5.10(2) Biennial license renewal fee for each license for each biennium is \$60.
- 5.10(3) Late fee for failure to renew before expiration is \$60.
- 5.10(4) Reactivation fee is \$120.
- 5.10(5) Duplicate or reissued license certificate fee is \$20.
- 5.10(6) Verification of license fee is \$20.
- 5.10(7) Returned check fee is \$25.
- 5.10(8) Disciplinary hearing fee is a maximum of \$75.
- 5.10(9) Provisional license fee is \$120.

This rule is intended to implement Iowa Code section 147.80 and chapter 155.

645—5.11(147,148B) Occupational therapy license fees. All fees are nonrefundable.

- 5.11(1) License fee for an OT or OTA license to practice occupational therapy is \$120.
- 5.11(2) Biennial license renewal fee to practice occupational therapy is \$60.
- 5.11(3) Biennial license renewal fee for an occupational therapy assistant is \$60.
- 5.11(4) Late fee for failure to renew before expiration is \$60.
- 5.11(5) Reactivation fee is \$120.
- 5.11(6) Duplicate or reissued license certificate fee is \$20.
- 5.11(7) Verification of license fee is \$20.
- 5.11(8) Returned check fee is \$25.
- 5.11(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148B and 272C.

645—5.12(147,154) Optometry license fees. All fees are nonrefundable.

- 5.12(1) License fee for license to practice optometry, license by endorsement, or license by reciprocity is \$300.
- 5.12(2) Biennial license renewal fee for each biennium is \$144.
- 5.12(3) Late fee for failure to renew before expiration date is \$60.
- 5.12(4) Reactivation fee is \$204.
- 5.12(5) Duplicate or reissued license certificate fee is \$20.
- 5.12(6) Verification of license fee is \$20.
- 5.12(7) Returned check fee is \$25.
- 5.12(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

645—5.13(147,148A) Physical therapy license fees. All fees are nonrefundable.

- 5.13(1) License fee for license to practice physical therapy or as a physical therapist assistant is \$120.
- 5.13(2) Biennial license renewal fee for a physical therapist is \$60.
- 5.13(3) Biennial license renewal fee for a physical therapist assistant is \$60.
- 5.13(4) Late fee for failure to renew before expiration is \$60.
- 5.13(5) Reactivation fee is \$120.
- 5.13(6) Duplicate or reissued license certificate fee is \$20.
- 5.13(7) Verification of license fee is \$20.
- 5.13(8) Returned check fee is \$25.
- 5.13(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148A and 272C.

645—5.14(148C) Physician assistants license fees. All fees are nonrefundable.

- 5.14(1) Application fee for a license is \$120.
- 5.14(2) Fee for a temporary license is \$120.
- 5.14(3) Renewal of license fee is \$120.

5.14(4) Late fee for failure to renew before expiration is \$60.

5.14(5) Reactivation fee is \$180.

5.14(6) Duplicate or reissued license certificate fee is \$20.

5.14(7) Fee for verification of license is \$20.

5.14(8) Returned check fee is \$25.

5.14(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148C and 272C.

645—5.15(147,148F,149) Podiatry license fees. All fees are nonrefundable.

5.15(1) License fee for license to practice podiatry, license by endorsement, or license by reciprocity is \$400.

5.15(2) License fee for temporary license to practice podiatry is \$200.

5.15(3) The fee for a license to practice orthotics, prosthetics, or pedorthics received on or before July 1, 2015, shall be \$600. The fee for a license to practice orthotics, prosthetics, or pedorthics received after July 1, 2015, shall be \$400.

5.15(4) Biennial license renewal fee is \$400 for each biennium.

5.15(5) Reactivation fee is \$460.

5.15(6) Temporary license renewal fee is \$200.

5.15(7) Late fee for failure to renew before expiration is \$60.

5.15(8) Duplicate or reissued license certificate fee is \$20.

5.15(9) Verification of license fee is \$20.

5.15(10) Returned check fee is \$25.

5.15(11) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148F, 149 and 272C.

645—5.16(147,154B) Psychology license fees. All fees are nonrefundable.

5.16(1) License fee for license to practice psychology is \$120.

5.16(2) Biennial license renewal fee is \$170.

5.16(3) Late fee for failure to renew before expiration is \$60.

5.16(4) Reactivation fee is \$230.

5.16(5) Duplicate or reissued license certificate fee is \$20.

5.16(6) Verification of license fee is \$20.

5.16(7) Returned check fee is \$25.

5.16(8) Disciplinary hearing fee is a maximum of \$75.

5.16(9) Processing fee for exemption to licensure is \$60.

5.16(10) Certification fee for a health service provider is \$60.

5.16(11) Biennial renewal fee for certification as a certified health service provider in psychology is \$60.

5.16(12) Reactivation fee for certification as a certified health service provider in psychology is \$60.

5.16(13) Provisional license fee is \$120.

5.16(14) Provisional license renewal fee is \$170.

This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154B and 272C and 2014 Iowa Acts, chapter 1043.

645—5.17(147,152B) Respiratory care license fees. All fees are nonrefundable.

5.17(1) Initial license fee.

a. The initial license fee for a respiratory care practitioner license is \$75, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

b. The initial license fee for a polysomnographic technologist license is \$75, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

c. The initial license fee for a respiratory care and polysomnography practitioner license is \$90, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

5.17(2) Biennial license renewal fee for each biennium.

a. The biennial license renewal fee for each biennium for a respiratory care practitioner license is \$75.

b. The biennial license renewal fee for each biennium for a polysomnographic technologist license is \$75.

c. The biennial license renewal fee for each biennium for a respiratory care and polysomnography practitioner license is \$90.

5.17(3) Late fee for failure to renew before expiration is \$60.

5.17(4) Reactivation fee.

a. The reactivation fee to practice respiratory care is \$135, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) if the license has been on inactive status for two or more years.

b. The reactivation fee to practice as a polysomnographic technologist is \$135, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) if the license has been on inactive status for two or more years.

c. The reactivation fee to practice respiratory care and polysomnography is \$150, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) if the license has been on inactive status for two or more years.

5.17(5) Duplicate or reissued license certificate fee is \$20.

5.17(6) Verification of license fee is \$20.

5.17(7) Returned check fee is \$25.

5.17(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 152B and 272C.

645—5.18(147,154E) Sign language interpreters and transliterators license fees. All fees are nonrefundable.

5.18(1) License fee for license to practice interpreting or transliterating is \$120.

5.18(2) License fee for temporary license to practice interpreting or transliterating is \$120.

5.18(3) Biennial license renewal fee for each biennium is \$120.

5.18(4) Late fee for failure to renew before expiration is \$60.

5.18(5) Duplicate or reissued license certificate fee is \$20.

5.18(6) Verification of license fee is \$20.

5.18(7) Returned check fee is \$25.

5.18(8) Disciplinary hearing fee is a maximum of \$75.

5.18(9) Reactivation fee is \$180.

This rule is intended to implement Iowa Code chapters 17A, 147, 154E and 272C.

645—5.19(147,154C) Social work license fees. All fees are nonrefundable.

5.19(1) License fee for license to practice social work is \$120.

5.19(2) Biennial license renewal fee for a license at the bachelor's level is \$72; at the master's level, \$120; and independent level, \$144.

5.19(3) Late fee for failure to renew before expiration is \$60.

5.19(4) Reactivation fee for the bachelor's level is \$132; for the master's level, \$180; and independent level, \$204.

5.19(5) Duplicate or reissued license certificate fee is \$20.

5.19(6) Verification of license fee is \$20.

5.19(7) Returned check fee is \$25.

5.19(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154C and 272C.

645—5.20(147) Speech pathology and audiology license fees. All fees are nonrefundable.

5.20(1) License fee for license to practice speech pathology or audiology, temporary clinical license, license by endorsement, or license by reciprocity is \$120.

5.20(2) Biennial license renewal fee for each biennium is \$96.

5.20(3) Late fee for failure to renew before expiration is \$60.

5.20(4) Reactivation fee is \$156.

5.20(5) Duplicate or reissued license certificate fee is \$20.

5.20(6) Verification of license fee is \$20.

5.20(7) Returned check fee is \$25.

5.20(8) Disciplinary hearing fee is a maximum of \$75.

5.20(9) Temporary clinical license renewal fee is \$60.

5.20(10) Temporary permit fee is \$30.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 9
“Complaints and Investigations”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 272C

Public Hearing

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

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

This proposed rulemaking is intended to provide guidance on complaint and investigation procedures. The rulemaking ensures licensees are aware of the investigative process and understand their rights and responsibilities related to the complaint and investigative process. The rulemaking sets forth information such as the process for submitting a complaint, duties of the licensee in reporting the licensee’s own malpractice or disciplinary actions, and duties of the licensee in reporting first-hand knowledge of violations from other licensees. The rulemaking also provides the procedure to issue investigatory subpoenas, initiate the peer review process and require board appearances by the licensee.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is not a direct cost to the licensee to comply with this rulemaking. However, a licensee does have to pay licensing application and renewal fees, which in turn gives the professional licensing boards the ability to hire staff to investigate the complaints. The licensee could also incur costs if the licensee decides to retain counsel to represent the licensee during the investigative process.

The agency bears the cost of staff to review complaints and investigate complaints. The time needed to manage this rulemaking is generally in the form of written and verbal correspondence, issuing subpoenas, gathering records, conducting interviews and preparing investigative reports. The board reviews the investigative information at board meetings. The board members are paid a per diem

for official board duties (\$50 per day) and mileage. Mileage costs have been minimal due to the use of virtual meetings. Peer reviews require additional costs. There is 1.0 full-time equivalent (FTE) staff member assigned to investigate professional licensing (PL) complaints, with support from executive officers. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

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

The public and licensees benefit from the proposed rulemaking. The rulemaking ensures licensees have knowledge of the complaint and investigative process. This ensures licensees understand their responsibilities and rights surrounding complaints and investigations. The investigative process also benefits the board because it permits the board to gather needed information to determine if a violation of board rule did occur. In turn, the public benefits because the investigatory process is the primary mechanism the boards have to ensure the public safety and welfare.

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

- Quantitative description of impact:

There are 19 boards impacted by this rulemaking, which account for over 61,000 licensed professionals. In total, these boards receive on average 300 to 350 complaints per year. Complaints are processed and investigated by board staff. The boards ultimately determine whether a board rule has been violated and whether discipline should be initiated against the licensee. While the licensee does not have a direct cost associated with complaints/investigations, a licensee may incur costs to hire legal counsel to represent the licensee during the investigation. Additionally, licensees are required to pay application and renewal fees for the license, which are used to fund the board operations. Most boards assess renewal fees every two years, but the cost of renewal varies depending on the board, with an average low of \$60 every two years ranging to \$400 every two years. There is 1.0 FTE position assigned to investigate PL complaints, with additional support from executive officers. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

The purpose of complaints and investigations is to address allegations against licensees, enable the board to make informed decisions and protect the public from unscrupulous practice. Eliminating complaints and investigations would allow acts detrimental to the public to go unchecked, which would ultimately be harmful to the public safety and welfare. The process proposed by this rulemaking works to allow staff to obtain necessary information and for the boards to then evaluate the extent to which a complaint does or does not violate board rule. This process is fairly similar across the country for regulated professions.

3. Costs to the State:

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

The Department bears costs to enforce this rule; however, the costs to support board staff salaries is paid by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. The Fund is funded through licensing fees. There is 1.0 FTE position assigned to investigate PL complaints. The board members are paid a \$50 per diem for official board duties as well as mileage.

- Anticipated effect on state revenues:

There is no anticipated impact from this rulemaking to state revenues. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The purpose of this rulemaking is to provide a method whereby the public can submit complaints to a board for violations of board rules by a licensee. The rulemaking further allows the boards a process to investigate the complaints and determine whether said violation did occur. When there is a violation, licensees are held accountable for the violation to ensure the protection of the public's safety and welfare. Eliminating boards' ability to receive complaints and conduct investigations would allow acts detrimental to the public to go unchecked and cause harm to the public.

The public and state bear no costs to implement this rulemaking because the boards' costs are funded through the Licensing and Regulation Fund established by 2023 Iowa Acts, Senate File 557. This Fund is created through licensing fees paid by the licensees for initial and renewal licenses and is used to cover the operations of the regulated professional licensing boards.

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

The boards' investigative process is largely dictated by statute in Iowa Code chapter 272C. This rulemaking sets forth the mechanisms to implement Iowa Code chapter 272C as required. The majority of the time and costs to implement this rulemaking come from the resources to investigate and the board's time to review and deliberate on the investigative findings. The board does utilize cost-effective measures to reduce the costs, such as letter correspondence when available instead of conducting personal interviews. After reviewing similar practices in states across the country, it was found that the investigative process in Iowa is fairly similar to the processes used across the country for regulated and licensed professionals.

6. Alternative methods considered by the agency:

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

Staff held conversations on alternative methods to implement and enforce this rulemaking. After reviewing the processes used in surrounding states, staff found that the complaint and investigative process in Iowa is similar to the processes used across the country to investigate licensed professionals.

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

The boards' ultimate goal is ensuring the public safety and welfare. The purpose of this rulemaking is to allow a method for the public to bring complaints against licensed professionals and allow the boards to investigate complaints. The boards need the ability to investigate complaints, gather information and make informed decisions on whether a rule has been violated. Without this process, acts detrimental to the public will go unchecked and ultimately harm the public.

Small Business Impact

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

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

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

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The licensees affected by this rulemaking come from a variety of professions. While some licensees could be running a small business, some also work for large hospitals, clinics and retailers. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business to comply with this rulemaking.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
COMPLAINTS AND INVESTIGATIONS

645—9.1(272C) Complaints.

9.1(1) Complaints can be submitted online, in writing, or verbally and are to include the name and contact information of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated by the board.

9.1(2) A person is not civilly liable for filing a complaint in good faith, or for cooperating with a board investigation.

645—9.2(272C) Report of malpractice claims or actions or disciplinary actions. The licensee will submit any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

645—9.3(272C) Report of acts or omissions. A licensee who has knowledge of rule violations committed by another licensee will file a report to the board. The report will include the name and contact information of the licensee and the date, time, and place of the incident.

645—9.4(272C) Investigation of complaints or reports. Board staff may request additional information, solicit a response from the licensee, subpoena records, conduct interviews, gather evidence, and perform other investigatory duties to sufficiently inform the board.

645—9.5(17A,272C) Issuance of investigatory subpoenas.

9.5(1) The board administrator or designee may, upon the written request of a board investigator or on the administrator's own initiative, subpoena books, papers, records, and other real evidence which is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

9.5(2) Each subpoena will contain:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production, or inspection and copying;
- d. The deadline for a motion to quash or modify the subpoena to be filed;
- e. The signature, address and telephone number of the board administrator or designee;
- f. The date of issuance;
- g. A return of service.

9.5(3) A person can challenge the subpoena by filing a motion to quash describing the legal justification for the motion accompanied by a legal brief or factual affidavits, within 14 days after service of the subpoena.

9.5(4) Upon receipt of a timely motion to quash or modify a subpoena, an administrative law judge will issue a decision. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

9.5(5) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board administrator, either in person, via email, or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

9.5(6) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

645—9.6(272C) Peer review.

9.6(1) A complaint may be assigned to a peer reviewer for review and report to the board.

9.6(2) The board determines what complaints or other matters are referred to a peer reviewer.

9.6(3) Peer reviewers are not to be liable for acts, omissions, or decisions made in connection with service made in good faith.

9.6(4) The peer reviewer will observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

645—9.7(17A) Appearance. The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the committee appearance, the licensee further waives any objection to the board administrator assisting the board in the contested case proceeding.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 11
“Contested Cases and Informal Settlement”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 272C

Public Hearing

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

November 8, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

Proposed Chapter 11 provides regulation on the contested case hearings including time requirements for taking action on a contested case, direction on the service of the statement of charges and notice of hearing as well as the required contents of the statement of charges and notice of hearing, the discovery process including issuance of subpoenas, the handling of pretrial motions and conferences and procedures for the hearings. The purpose of the chapter is to provide a licensee an outline of how a contested case proceeding is initiated and the rights and responsibilities of the licensee during that process. This chapter ensures the licensee is aware of how a contested case begins, how the licensee can gather information to prepare for the hearing and the potential result of the hearing.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The licensee may incur costs of legal representation to represent the licensee during the investigation and contested case hearing. The agency incurs costs to implement the chapter including board staff to investigate the complaints, prepare the investigative files for board review and hold the contested hearings.

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

The public and licensees benefit from the proposed chapter. The chapter provides licensees with a procedure that ensures due process is met when allegations arise against a licensee. The public is

benefited by the assurance that allegations are taken seriously and that an avenue exists to investigate and hold hearings against the licensee for conduct that may be a violation of board rule.

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

- Quantitative description of impact:

The licensee may incur costs for representation during a contested case hearing. Additional costs may include the recording and transcribing of records should the case go to appeal, examination and responding to discovery requests and service of subpoenas.

A board incurs costs for service by mail, publication or personal service at the initiation of a contested case hearing as well as the staff necessary to conduct the contested case hearing and the board member's time for the hearings.

The board does have the option to consolidate cases if there is more than one complaint filed against a licensee at the same time. This allows for more efficient use of time and resources for both the board and the licensee.

- Qualitative description of impact:

The process for contested cases is largely dictated by Iowa Code section 17A.12. The board believes the proposed chapter provides a balanced regulatory process for initiating and holding contested case hearings. The chapter ensures licensees are aware of their rights and responsibilities when a contested case is set and also provides licensees with guidance on what the licensee can do in terms of legal representation, discovery requests and options after the board issues a final order. Without this chapter, boards would have large discretion on how to conduct contested hearings and implement discipline against a licensee and licensees would not have a procedure in place to contest allegations in an adversarial fashion. The chapter ensures due process is afforded to each licensee.

3. Costs to the State:

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

The agency incurs costs in the form of board staff, board members per diem and procedural costs to carry out this chapter. The board staff assist with preparing the notices for hearing and correspondence with the licensee to set hearings. The board members are paid a per diem (\$50 per day) for official board business and mileage to attend the contested hearings. The boards generally hold contested hearings at the time of their regularly scheduled board meetings, but sometimes additional dates have to be set just for the contested hearings. The board is responsible for ensuring process of service on the licensee to initiate the contested case, which includes costs to serve the licensee by mail, publication or personal service. The board does attempt to utilize the least expensive option (service by mail) before opting for an alternative service option.

Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues as a result of this rulemaking. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

During contested case hearings, the boards utilize an administrative law judge (ALJ) to preside over the hearing and provide rulings on prehearing motions. The ALJ is paid through state funds. The board does not have data on the ALJ salaries or the percentage of work completed by the ALJ on behalf of the boards.

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

DIAL regulates licenses for 19 boards, which lends to over 61,000 licensees. The proposed rule affects all 61,000 licensees. Without this chapter, boards would have large discretion on how to conduct

contested hearings and implement discipline against a licensee and the licensees would not have a procedure in place to contest allegations in an adversarial fashion. The chapter ensures due process is afforded to each licensee.

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

The process for contested case hearings is largely dictated by Iowa Code chapter 17A. The board does have the option to consolidate cases if a licensee has more than one complaint filed against that licensee at the same time. The board also has procedures in place for contested case hearings where there is no factual dispute. This allows for more efficient use of time and resources for both the board and the licensee.

6. Alternative methods considered by the agency:

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

Staff held conversations about alternative, less intrusive methods to implement and enforce this chapter. Staff was not able to identify a less intrusive method; however, the chapter does provide for alternatives such as consolidated cases and hearings with no factual dispute to allow for more efficiency in handling contested cases where applicable.

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

The process for contested cases is largely dictated by Iowa Code chapter 17A. The board has little discretion on how to conduct the hearings or the process of getting to the hearings.

Small Business Impact

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

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

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

While some licensees could be running a small business, some also work for large corporations, clinics and retailers. The board does recognize that the impact of a contested case could certainly be greater on a small business than it would on a large company, for instance, to carve time out of the schedule for a small business owner to be present for a hearing. However, the chapter is proposed to ensure due process for all licensees including small business licensees.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11 CONTESTED CASES AND INFORMAL SETTLEMENT

645—11.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of _____ examiners.

645—11.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means the state of Iowa as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent, or an intervenor.

“*Presiding officer*” means the board of _____ examiners.

645—11.3(17A) Time requirements.

11.3(1) Time will be computed as provided in Iowa Code section 4.1(34).

11.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.

645—11.4(17A) Probable cause. If the board finds there is probable cause for taking disciplinary action against a licensee following investigation, the board will order a contested case hearing be commenced by the filing of a statement of charges and notice of hearing.

645—11.5(17A) Statement of charges and notice of hearing.

11.5(1) Legal review. Every statement of charges and notice of hearing prepared by the board will be reviewed by the office of the attorney general prior to filing.

11.5(2) Delivery. Delivery of the statement of charges and notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Restricted certified mail, return receipt requested; or
- c. Publication, as provided in the Iowa Rules of Civil Procedure.

11.5(3) Contents. The statement of charges and notice of hearing will contain the following information:

- a. A statement by the board showing that there is probable cause to file the statement of charges;
- b. A statement of the time, place, and nature of the hearing;
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- d. A reference to the particular sections of the statutes and rules involved;
- e. A short and plain statement of the matters asserted containing sufficient detail to give the respondent fair notice of the allegations so that the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;
- f. Identification of all parties including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the parties’ counsel, if known;
- g. Reference to the procedural rules governing conduct of the contested case proceeding;
- h. Reference to the procedural rules governing informal settlement;
- i. Identification of the board as the presiding officer; and
- j. Notification of the time period in which a party may request, when applicable, and pursuant to Iowa Code section 17A.11, and rules 645—11.8(17A,272C) and 645—11.9(17A,272C), that the presiding officer be an administrative law judge.

645—11.6(17A,272C) Legal representation. Following the filing of the statement of charges and notice of hearing, the office of the attorney general will be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board will not represent the board in that case but will represent the public

interest. All other parties to a proceeding before the board will be entitled to have counsel at their own expense.

645—11.7(17A,272C) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case will be the board. The board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 645—11.24(17A). An administrative law judge may assist and advise the board at the contested case hearing.

645—11.8 Reserved.

645—11.9(17A) Presiding officer in a nondisciplinary contested case.

11.9(1) Any party in a nondisciplinary contested case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board.

11.9(2) The board may deny the request only upon a finding that one or more of the following apply:

- a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- b. An administrative law judge with the qualifications identified in subrule 11.9(4) is unavailable to hear the case within a reasonable time.
- c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- f. The request was not timely filed.
- g. The request is not consistent with a specified statute.

11.9(3) The board will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 11.9(4), the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

11.9(4) An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have a J.D. degree unless waived by the agency.

11.9(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek appeal to the board in order to exhaust adequate administrative remedies. Such appeals must be filed within ten days of the date of the issuance of the challenged ruling, but no later than the time for compliance with the order or the date of hearing, whichever is first.

11.9(6) Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon appeal, the board will have the powers of and will comply with the provisions of this chapter which apply to presiding officers.

645—11.10(17A) Disqualification.

11.10(1) A presiding officer or other person will withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, 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;

- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

11.10(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include:

- a. General direction and supervision of assigned investigators;
- b. Unsolicited receipt of information which is relayed to assigned investigators;
- c. Review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or
- d. Exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

11.10(3) Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case will be disclosed if required by Iowa Code section 17A.17(3) and subrules 11.10(3) and 11.22(9).

11.10(4) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person will submit the relevant information for the record by affidavit including a statement of the reasons for the determination that withdrawal is unnecessary.

11.10(5) If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.10(1), the party will file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board will determine the matter as part of the record in the case.

645—11.11(17A) Consolidation—severance.

11.11(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

11.11(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

645—11.12(17A) Pleadings.

11.12(1) Pleadings. Pleadings may be required by rule, by the statement of charges, or by order of the presiding officer.

11.12(2) Answer. An answer will be filed within 20 days of service of the statement of charges and notice of hearing.

- a. An answer will:
 - (1) Identify on whose behalf it is filed;
 - (2) Set forth the name, address and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney, if any, representing that person;
 - (3) Specifically admit, deny, or otherwise answer all material allegations of the statement of charges; and

(4) Set forth any facts deemed necessary to show an affirmative defense and contain as many additional defenses as the respondent may claim.

b. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

11.12(3) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Otherwise, a party may amend a pleading only with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

645—11.13(17A) Service and filing.

11.13(1) Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding will be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with its filing. Except for the original statement of charges and notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

11.13(2) Service—how made. Service upon a party represented by an attorney will be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.13(3) Filing—when required. After the notice of hearing, all documents in a contested case proceeding will be filed with the board. All documents that are required to be served upon a party will be filed simultaneously with the board.

11.13(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of _____ Examiners, Board Administrator, Lucas State Office Building, Des Moines, Iowa 50319; delivered to an established courier service for immediate delivery to that office; or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

11.13(5) Proof of mailing. Proof of mailing includes:

- a.* A legible United States Postal Service postmark on the envelope, or
- b.* A certificate of service, or
- c.* A notarized affidavit, or
- d.* A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the _____ Board, and to the names and addresses of the parties listed below by depositing the same in (a United States Post Office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

645—11.14(17A) Discovery.

11.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules, by order of the presiding officer, or by agreement of the parties, time periods for compliance with discovery will be as provided in the Iowa Rules of Civil Procedure.

11.14(2) Any motion relating to discovery will allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery will be ruled upon by the presiding officer. Opposing parties will be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 11.14(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.14(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

645—11.15(17A,272C) Subpoenas in a contested case.

11.15(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the board administrator or designee upon written request. A request for a subpoena of mental health records must confirm the conditions described in 645—subrule 9.5(1) prior to the issuance of the subpoena.

11.15(2) A request for a subpoena will include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a.* The name, address and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time, and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested;
- f.* The date, time and location for production, or inspection and copying; and
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in 645—subrule 9.5(1) have been satisfied.

11.15(3) Each subpoena will contain, as applicable:

- a.* The caption of the case;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the board administrator or designee;
- j.* The date of issuance; and
- k.* A return of service.

11.15(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the board administrator or designee will mail the subpoena to the requesting party, with a copy to the opposing party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

11.15(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena describing the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

11.15(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

11.15(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board administrator, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

11.15(8) If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

645—11.16(17A) Motions.

11.16(1) Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

11.16(3) The presiding officer may schedule oral argument on any motion.

11.16(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

645—11.17(17A) Prehearing conferences.

11.17(1) Any party may request a prehearing conference. Prehearing conferences will be conducted by the board administrator, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the board administrator's own motion will be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date. Written notice of the prehearing conference will be given by the board administrator to all parties. For good cause the board administrator may permit variances from this rule.

11.17(2) The parties at a prehearing conference will be prepared to discuss the following subjects, and the board administrator or administrative law judge may issue appropriate orders concerning:

- a.* The possibility of settlement.
- b.* The entry of a scheduling order to include deadlines for completion of discovery.
- c.* Stipulations of law or fact.
- d.* Stipulations on the admissibility of exhibits.
- e.* Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the board administrator or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.
- f.* Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the board administrator or administrative law judge at the prehearing conference. Exhibits other than rebuttal exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.
- g.* Stipulations for waiver of any provision of law.
- h.* Identification of matters which the parties intend to request be officially noticed.
- i.* Consideration of any additional matters which will expedite the hearing.

11.17(3) Prehearing conferences may be conducted by telephone unless otherwise ordered.

645—11.18(17A) Continuances.

11.18(1) Applications for continuances will be filed with the board. If the application for continuance is not contested, the board administrator will issue the appropriate order. If the application for continuance is contested, the matter will be heard by the board or may be delegated by the board to an administrative law judge.

11.18(2) A written application for a continuance will:

- a.* Be made at the earliest possible time and no less than five working days before the hearing. Within five working days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating, or emergency circumstances;
- b.* State the specific reasons for the request; and
- c.* Be signed by the requesting party or the party's representative.

11.18(3) The presiding officer may require documentation of any grounds for continuance. In determining whether to grant a continuance, the presiding officer may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The public interest;
- d.* The likelihood of informal settlement;
- e.* The existence of an emergency;
- f.* Any objection;
- g.* Any applicable time requirements;
- h.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- i.* The timeliness of the request; and
- j.* Other relevant factors.

645—11.19(17A,272C) Hearing procedures.

11.19(1) The presiding officer will have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions and may be assisted and advised by an administrative law judge.

11.19(2) All objections will be timely made and stated on the record.

11.19(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at their own expense.

11.19(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

11.19(5) The presiding officer will maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.19(6) Witnesses may be sequestered during the hearing.

11.19(7) The presiding officer will have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

11.19(8) The presiding officer will conduct the hearing in the following manner:

a. The presiding officer will give an opening statement briefly describing the nature of the proceedings;

b. The parties will be given an opportunity to present opening statements;

c. The parties will present their cases in the sequence determined by the presiding officer;

d. Each witness will be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

11.19(9) The board members and the administrative law judge have the right to question a witness. Examination of witnesses is subject to properly raised objections.

11.19(10) The hearing will be open to the public unless the licensee requests that the hearing be closed.

645—11.20(17A) Evidence.

11.20(1) The presiding officer will rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.20(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.20(3) Evidence in the proceeding will be confined to the issues as to which the parties received notice prior to the hearing unless a party waives the party's right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual

notice of those issues, that party, upon timely request, will receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

11.20(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence will be appropriately marked and be made part of the record.

11.20(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection will be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling will 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.

11.20(6) 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 will 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 will be marked as part of an offer of proof and inserted in the record.

11.20(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

645—11.21(17A) Default.

11.21(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.21(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

11.21(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

11.21(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

11.21(5) Properly substantiated and timely filed motions to vacate will be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties will have ten days to respond to a motion to vacate. Adverse parties will be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

11.21(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

11.21(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 645—11.24(17A).

11.21(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer will issue another notice of hearing and the contested case will proceed accordingly.

11.21(9) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 645—11.26(17A).

645—11.22(17A) Ex parte communication.

11.22(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the statement of charges and notice of hearing, there will be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

11.22(2) Prohibitions on ex parte communications commence with the issuance of the statement of charges and notice of hearing in a contested case and continue for as long as the case is pending before the board.

11.22(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

11.22(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications will be provided in compliance with rule 645—11.6(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

11.22(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

11.22(6) The board administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a final decision under any provision of law and they comply with this rule.

11.22(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and will notify other parties when seeking to continue hearings or other deadlines.

11.22(8) A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication will be submitted for inclusion in the record under seal by protective order.

b. If the presiding officer determines that disqualification is not warranted, such documents will be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

11.22(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

11.22(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by board personnel will be reported to the board and its board administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

645—11.23(17A) Recording costs. Upon request, the board will provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record will be paid by the requesting party.

645—11.24(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the board administrator or an administrative law judge. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first. In determining whether to do so, the board will consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

645—11.25(17A) Applications for rehearing.

11.25(1) Who may file. Any party to a contested case proceeding may file an application for rehearing from a final order. The filing of an application for rehearing is not necessary to exhaust administrative remedies for purposes of judicial review.

11.25(2) Content of application. The application for rehearing will state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether the applicant requests an opportunity to submit additional evidence.

11.25(3) Additional evidence. A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceedings, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding. A written request to present additional evidence must be filed with the application for rehearing or, by a nonappealing party, within 14 days of service of the notice of appeal.

11.25(4) Filing deadline. The application will be filed with the board within 20 days after issuance of the final decision.

11.25(5) Notice to other parties. A copy of the application will be timely mailed by the applicant to all parties of record not joining therein.

11.25(6) Disposition. Any application for a rehearing will be deemed denied unless the agency grants the application within 20 days after its filing.

11.25(7) Only remedy. Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

11.25(8) Proceedings. If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

645—11.26(17A) Stays of agency actions.

11.26(1) *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

11.26(2) *When granted.* In determining whether to grant a stay, the board will consider the factors listed in Iowa Code section 17A.19(5) “c.”

11.26(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

645—11.27(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

645—11.28(17A) Emergency adjudicative proceedings.

11.28(1) *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 board 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 board by emergency adjudicative order.

11.28(2) Before issuing an emergency adjudicative order, the board will consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person 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;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

11.28(3) *Issuance of order.*

a. An emergency adjudicative order will contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board’s decision to take immediate action. The order is a public record.

b. The written emergency adjudicative order will be immediately delivered to the person who is required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the agency;
- (3) Certified mail to the last address on file with the agency; or
- (4) Fax. Fax may be used as the sole method of delivery if the person 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.

c. To the degree practicable, the board will select the procedure for providing written notice that best ensures prompt, reliable delivery.

11.28(4) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board will make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

11.28(5) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

a. Issuance of a written emergency adjudicative order will include notification of the date on which board proceedings are scheduled for completion.

b. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the person who is required to comply with the order is the party requesting the continuance.

645—11.29(17A) Appeal. Any appeal to district court from a decision in a contested case will be taken within 30 days from the date of issuance of the decision by the board pursuant to Iowa Code section 17A.19.

645—11.30(272C) Publication of decisions. Final decisions of the board in a contested case will be transmitted to the appropriate association, the news media, and the employer.

645—11.31(272C) Reinstatement.

11.31(1) Any person whose license to practice has been revoked or suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked.

11.31(2) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

11.31(3) All proceedings for reinstatement will be initiated by the respondent, who will file with the board an application for reinstatement of the license. Such application will be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement will be subject to the same rules of procedure as other cases before the board.

11.31(4) An application for reinstatement will allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts is on the respondent.

11.31(5) An order of reinstatement will be based upon a decision which incorporates findings of facts and conclusions of law. The order will be published as provided for in this chapter.

645—11.32(17A,272C) License denial.

11.32(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing will specifically delineate the facts to be contested at hearing.

11.32(2) All hearings held pursuant to this rule will be held pursuant to the process outlined in this chapter.

645—11.33(17A,272C) Informal settlement.

11.33(1) *Informal settlement—parties.* A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by an assistant attorney general, the respondent, or the board. The board shall designate a board member with authority to negotiate on behalf of the board. The full board will not be involved in negotiations until the presentation of a final, written, signed informal settlement to the full board for approval.

11.33(2) *Informal settlement—waiver of notice and opportunity to be heard.* Consent to negotiation by a respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code chapter 17A during informal settlement negotiation, and the assistant attorney general is thereafter authorized to discuss informal settlement with the board's designee until that consent is expressly withdrawn.

11.33(3) *Informal settlement—board approval.* All informal settlements are subject to approval of a majority of the board. No informal settlement will be presented to the board for approval except in final, written form executed by the respondent. If the board fails to approve the informal settlement, it will be of no force or effect to either party.

11.33(4) *Informal settlement—disqualification of designee.* A board member who is designated to act in negotiation of settlement is not disqualified from participating in the contested case should the case proceed to hearing.

11.33(5) *Voluntary surrender.* The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted in connection with a disciplinary proceeding, has the same force and effect as an order of revocation.

These rules are intended to implement Iowa Code chapters 17A and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 13
“Discipline”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 21.7 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code section 21.7 and chapter 272C

Public Hearing

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

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

This proposed rulemaking provides protection to Iowa by publicly defining required professional standards for the 19 boards represented in this chapter. This includes the following boards: Hearing Aid Specialist Board, Speech Pathology and Audiology Board, Nursing Home Administrator Board, Optometry Board, Sign Language Interpreters and Transliterators Board, Barbering and Cosmetology Arts and Sciences Board, Physical and Occupational Therapy Board, Athletic Training Board, Mortuary Science Board, Physician Assistants Board, Chiropractic Board, Behavioral Science Board, Psychology Board, Social Work Board, Podiatry Board, Massage Therapy Board, Dietetics Board, and Respiratory Care Board. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals. When professional standards are not met, licensees can be subject to discipline against their license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation.

The boards have the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Health and Human Services (HHS) Bureau of Professional Licensing have similar disciplinary standards for all professions. For this reason, and to reduce redundant language, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are standard to the regulated professions and are therefore covered in this general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Licensees and the agency bear the costs of implementing and enforcing disciplinary rules.

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

The intended benefit of this rulemaking is to ensure public safety and maintain a high level of care for Iowans. The public is undoubtedly the class most benefited by disciplinary regulation. In order to regulate the professions as directed in statute, disciplinary authority and action are crucial to protecting the public safety. Discipline ensures corrective action of licensees not abiding by requirements established to reduce harm to the public.

Licensees also benefit from disciplinary measures because the measures ensure all members of the profession are providing high-quality care and services.

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

- Quantitative description of impact:

Discipline allows for action to be taken against licensees found to have violated the requirements of their profession. In 2022, the 19 boards in the legacy HHS Bureau of Professional Licensure received 322 complaints and issued 28 public discipline orders. In 2021, the boards received 352 complaints and issued 42 public discipline orders.

A board may impose a civil penalty against a licensee for violation of board rules. Civil penalties are set by statute and capped at a certain amount depending on the profession. Additionally, licensees may incur legal costs for representation during the disciplinary proceedings and costs to correct the violating behavior such as evaluations or additional education on a particular subject matter.

- Qualitative description of impact:

These boards regulate professionals utilizing skills that could harm the public if not regulated. The boards need to have a method to initiate disciplinary proceedings when a licensee violates the Board's rules and puts the public safety and welfare at risk.

3. Costs to the State:

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

The agency incurs costs in the form of staff needed to manage board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. Five full-time executive officers support the full scope of work of the boards regulated in the Professional Licensure Division[645]. Additionally, these 19 boards employ one full-time investigator. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover operations of the regulated professional boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund.

During disciplinary proceedings, the boards bring in an administrative law judge to preside over the hearing. Administrative law judges are paid by the State of Iowa. The boards do not have data on the salary or annual cost of the administrative law judge's services for the boards.

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

The boards believe the costs associated with this rulemaking are justified by the benefits being achieved. In order to regulate the profession as directed in statute, the boards need the authority to discipline and act on complaints of rule violations in order to protect the public and ensure the safety and well-being of our public. Discipline ensures corrective action against licensees who are not abiding by requirements established to reduce harm to the public.

The boards believe inaction in the area of discipline would create a situation where incompetent practitioners are serving the public. Incompetency could lead to serious harm for the public.

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

The boards have not identified less intrusive or less costly methods for achieving the purpose of this rulemaking. The boards believe these requirements are important in order to ensure that Iowans receive services from competent practitioners.

6. Alternative methods considered by the agency:

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

The boards considered options of reducing or eliminating grounds for discipline, but the boards believe that these requirements are important in order to ensure high-quality services for all Iowans.

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

The boards are tasked with regulating the professions as directed in statute. Reducing or eliminating the grounds for discipline would leave the public at risk of harm from incompetent practitioners.

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions.

Small Business Impact

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

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

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

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of practice standards for licensed professionals. While some licensees may be running a small business, some also work for large organizations. To exempt small businesses from adhering to this

rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
DISCIPLINE

645—13.1(272C) Definitions.

“Board” means a professional licensing board established pursuant to Iowa Code chapter 147.

“Licensee” means a person licensed under Iowa Code chapter 147.

“Licensee discipline” means the same as defined in Iowa Code section 272C.1.

645—13.2(147,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in Iowa Code section 147.55:

13.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

13.2(2) Professional incompetence. Professional incompetence includes, but is not limited to:

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

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

c. A failure to exercise the degree of care which is ordinarily exercised by the average licensees acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensee 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.

13.2(3) Practice outside the scope of the profession.

13.2(4) Habitual intoxication or addiction to the use of drugs, including:

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

13.2(5) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

13.2(6) Falsification, alteration or destruction of client or patient records with the intent to deceive.

13.2(7) Acceptance of any fee by fraud or misrepresentation.

13.2(8) Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

13.2(9) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.

13.2(10) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

13.2(11) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory or country; or failure of the licensee to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

13.2(12) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice in another state, district, territory or country.

13.2(13) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

13.2(14) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

13.2(15) Engaging in any conduct that subverts or attempts to subvert a board investigation.

13.2(16) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

13.2(17) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

13.2(18) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

13.2(19) Failure to pay costs assessed in any disciplinary action.

13.2(20) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

13.2(21) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

13.2(22) Knowingly aiding, assisting, or advising a person to unlawfully practice the profession.

13.2(23) Failure to report a change of name or address within 30 days after it occurs.

13.2(24) Representing oneself as a licensee when one's license has been suspended or revoked, or when one's license is on inactive status.

13.2(25) Permitting another person to use the licensee's license for any purpose.

13.2(26) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license to practice the profession.

13.2(27) Unethical conduct. In accordance with Iowa Code section 147.55(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 or client.
- 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. Engaging in a professional conflict of interest.

13.2(28) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

13.2(29) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

645—13.3(272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions as defined in Iowa Code section 272C.3, and as follows:

1. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
2. Such other sanctions allowed by law.

645—13.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating facts or other countervailing considerations.
4. The number of prior violations or complaints.
5. The seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code sections 21.7, 272C.4, 272C.5, and 272C.6.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 14
“Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 272C and 2020 Iowa Acts, House File 2627

Public Hearing

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

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:3192812345)

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

This proposed rulemaking clarifies the pathway to potential licensure for individuals with criminal convictions. The requirements set out in rule ensure a streamlined pathway while protecting the public through criteria that allows a board to review the complete criminal record, evidence of rehabilitation, and other information when making a determination on eligibility for licensure. This rulemaking implements recent legislation, 2020 Iowa Acts, House File 2627.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees and the board will bear the costs of this rulemaking. Licensees have the option to petition the board for an eligibility waiver prior to completing a license application. The purpose of the eligibility

waiver is to inform the licensee of whether the individual's convictions are disqualifying offenses. There is a \$25 fee associated with the eligibility waiver. The board employs staff to process the waivers and applications. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

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

Licensees greatly benefit from this rulemaking. While the board is unable to pull statistics from the licensing database on the number of individuals with a criminal conviction, multiple individuals with prior criminal convictions have been licensed. These rules, as directed by the legislation, open up career opportunities for individuals with criminal convictions that may not have previously existed.

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

- Quantitative description of impact:

While there are no known quantitative costs to the public, the licensee does incur costs related to licensing and eligibility. An individual may petition the board for an eligibility waiver prior to completing the licensing application. The board uses the eligibility waiver process to determine if the individual's criminal convictions are disqualifying offenses. There is a \$25 fee associated with the eligibility waiver. Licensing fees depend on the profession.

Board staff are needed to process the license applications and eligibility waiver petitions. The Department employs 5.0 full-time equivalent (FTE) positions dedicated to processing all licensure applications for those professions regulated by the Professional Licensure Division[645]. If the application needs higher review, it is sent on to a board executive and the Attorney General's office. Staff salaries to support the work of the board are covered by the Fund. Licensing fees go into the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

This rulemaking, as directed by legislation, opens up career opportunities for individuals with criminal convictions who may not have been able to secure a license in the past. The rulemaking provides some discretion of the board to determine whether a person has been rehabilitated to a point where the public would be safe with the individual receiving a license in a particular field.

3. Costs to the State:

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

The agency incurs costs in the form of staff to support the board with the license applications and eligibility waivers. The DIAL Licensing Division employs 5.0 FTE positions dedicated to processing all licensure applications for those professions regulated in the Professional Licensure Division[645]. If an application needs higher review, it is sent on to a board executive and the Attorney General's office. Staff salaries to support the work of the board are covered by the Fund. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenue from this rulemaking. The rulemaking allows for more individuals to receive a professional license, which creates more job opportunities for those individuals. Having more potential and more opportunities allows the licensee to contribute back to the state revenue.

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

The board believes the intended benefit of this rulemaking outweighs any potential costs of the rulemaking. The intended benefit is being achieved because this rulemaking is allowing a pathway for those with criminal convictions to obtain professional licenses that the persons may not otherwise be able to obtain. The board believes it needs to have a streamlined approach to review licensees' criminal convictions and potential rehabilitation to determine whether that past criminal conviction would have a negative impact on the individual obtaining a license. While the board does not have a statistic for how many people have been able to obtain a license with a criminal conviction, several licensees have utilized

this chapter to be able to obtain a license and have opportunities for jobs. Without this rulemaking, some individuals would be automatically excluded from practicing in certain professions.

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

The purpose of this rulemaking is to allow individuals with past criminal convictions the opportunity to petition the board for a determination on whether the individual is able to obtain a license. The rulemaking also provides a streamlined process for the board to review past criminal convictions and determine whether or not a license should be granted based on the nature of the criminal conviction and the potential rehabilitation. The rulemaking itself provides a less intrusive method to determine whether an individual can obtain a license through the petition for eligibility waiver. The waiver process allows individuals to apply for a determination just on the criminal convictions prior to filing for the license application. The cost of the waiver is \$25, whereas the cost for license application is much more.

6. Alternative methods considered by the agency:

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

The boards have not identified a less restrictive alternative to the requirements for use of criminal convictions in eligibility determinations and initial licensing decisions because these rules set the pathway for licensure of an individual with criminal convictions. Included in the rulemaking is the option for potential licensees to petition the board for eligibility determination prior to their initial license application. This allows for the potential licensee to pay only a fraction of the cost (\$25) as opposed to the entire licensing fees prior to a finding of whether the licensee's criminal convictions will disqualify the licensee from receiving a license.

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

Alternative methods were not considered because this rulemaking is required by statute enacted by 2020 Iowa Acts, House File 2627.

Small Business Impact

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

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

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

The eligibility waiver allows small business licensees to pay a small fee for the board to determine whether the individual's criminal convictions are disqualifying offenses that would prevent the individual from obtaining a license. The eligibility waiver is a tool used by a licensee prior to completing the full licensure process, which has a much higher fee associated with it.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 14 and adopt the following new chapter in lieu thereof:

CHAPTER 14
USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL
LICENSING DECISIONS

645—14.1(272C) Definitions.

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“*Conviction*” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“*Disqualifying offense*” means a conviction directly related to the duties and responsibilities of the profession pursuant to Iowa Code section 272C.1(8).

“*License*” means any license, registration, or permit issued by the board.

645—14.2(272C) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to rule 645—14.3(272C), the applicant’s convictions will be reviewed when the board receives a completed license application.

14.2(1) An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

14.2(2) An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

14.2(3) An applicant must submit all evidence of rehabilitation that the applicant wishes to be considered by the board.

14.2(4) The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

14.2(5) An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

14.2(6) Any application fees paid will not be refunded if the license is denied.

645—14.3(272C) Eligibility determination.

14.3(1) An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure.

14.3(2) To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner shall submit all of the following:

- a. A completed petition for eligibility determination form;
- b. The complete criminal record for each of the petitioner’s convictions;
- c. A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should find the petitioner rehabilitated;
- d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- e. Payment of a nonrefundable fee of \$25.

645—14.4(272C) Appeal. A petitioner deemed ineligible or an applicant denied a license due to a disqualifying offense may appeal the decision in the manner and time frame set forth in the board’s written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board’s rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board’s written decision will become a final order.

14.4(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

14.4(2) The contested case hearing shall be closed to the public, and the board's review of a proposed decision shall occur in closed session.

14.4(3) The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

14.4(4) A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

645—14.5(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

These rules are intended to implement 2020 Iowa Acts, House File 2627.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 16
“Iowa Professionals Review Committee”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C.3
State or federal law(s) implemented by the rulemaking: Iowa Code section 272C.3

Public Hearing

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

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to form a committee to monitor impaired professionals for the purpose of public safety. The committee may include a licensed practitioner who has expertise in the area of substance abuse and addiction treatment; a licensed practitioner who has expertise in diagnosis and treatment of psychological disorders and disabilities; a specialty board-certified psychiatrist; a licensee who has remained free of addiction for a period of no less than two years since successfully completing the board-approved recovery program; and a licensed physician, physician assistant or advanced registered nurse practitioner whose specialty area is family practice or who has expertise in neurological disorders. The goal of this composition is to ensure that the committee has expertise in medicine, addiction, disability and/or recovery. The program is confidential and participation is not a matter of public record. Specific eligibility criteria must be met to ensure that matters that may need to be addressed by the board are routed appropriately. The goal of the program is to ensure that a licensee is safe to practice the licensee’s profession through ongoing committee monitoring. Participants enter into a contract with the committee and agree to adhere to all terms and agreements set forth in the contract. Failure to comply with the provisions of the contract gives the committee the authority to make a referral to the board for possible disciplinary action. If a contract provision is breached that poses an immediate risk to the public, the committee may place immediate practice restrictions on the licensee.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are costs to the licensee to participate in this program. The licensee has to have a diagnosed impairment, which is often determined through a substance abuse or other type of evaluation to assess the potential impairment. This evaluation is done at the expense of the licensee. The terms of the contract set forth requirements the licensee must meet to participate in the program, which may include therapy, random drug screens, Alcoholics Anonymous meetings, etc. Participation in these requirements is at the expense of the licensee.

The boards incur costs associated with this rule as well, including staff to review applications for the program and monitor the licensee's participation. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operation costs for the regulated professional licensing boards.

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

The impaired practitioner program gives licensees an opportunity to receive the treatment they need and be rehabilitated. This sets up licensees who complete the program to safely and successfully continue their practice, benefiting the public and licensee alike.

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

- Quantitative description of impact:

The annual caseload of the Iowa Professionals Review Committee is roughly 15 to 20 participants, with 2 to 3 people graduating from the program each year. Contracts are generally 3 to 5 years long, with a host of monitoring requirements. This program offers licensees an opportunity to receive treatment and, if they graduate, regain full privileges of licensure.

- Qualitative description of impact:

The rulemaking provides for a confidential program to assist professionals who may be struggling with addiction, mental health or physical disabilities. Substantively, the goal of the terms of participation is to ensure that the licensee is safe to practice the licensee's profession. The program provides ongoing monitoring through the committee, adding accountability for the licensee. Failure to comply with the requirements of the contract could result in referral to the board for disciplinary action. A licensee who successfully completes the program is able to regain full privileges of licensure.

3. Costs to the State:

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

Costs to the agency are the staff time needed to review applications and monitor participants of the program. Staff salaries to support the work of the professional licensing boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees, not the State. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

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

The boards believe the costs of this program are justified by the benefits received. The program allows licensees an avenue outside of discipline to address areas of impairment while being monitored by a professional group. Without this confidential program, licensees would likely be subject to discipline, lose their license to practice or seriously harm a member of the public by attempting to practice while impaired.

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

This program is less restrictive than discipline. The program is not punitive, and it is confidential. The program provides the ability for individuals dealing with impairment to heal privately while simultaneously being monitored by a qualified group of professionals to ensure the public is protected. The costs of the program are individually based and determined by the evaluations and needs of the licensee. At this time, the boards have not identified a less restrictive alternative for the impaired practitioner program.

6. Alternative methods considered by the agency:

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

At this time, the boards have not identified any alternative methods for the impaired practitioner program.

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

The boards believe this program is needed to provide options for impaired professionals to rehabilitate themselves and be able to safely practice. This program provides licensees with a less restrictive option other than discipline. The licensees can participate confidentially and receive the help they need to be successful in their professions.

Small Business Impact

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

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

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

The proposed rulemaking provides an alternative for small business licensees who may be encountering impairment. Instead of being subject to discipline procedures, the licensee may enter the confidential program to seek assistance. When the licensee graduates from the program, the licensee will regain full privileges of licensure. Disciplinary proceedings are often costly for the licensee to hire legal counsel and can result in suspension or revocation of the license. This program allows the licensee to maintain the license and be monitored to ensure safe practice for all Iowans.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16 IOWA PROFESSIONALS REVIEW COMMITTEE

645—16.1(272C) Definitions.

“*Contract*” means the written document establishing the terms for participation in the impaired practitioner program.

“*Initial agreement*” means the written document establishing the initial terms for participation in the impaired practitioner program.

“*IPRC*” or “*committee*” means the impaired Iowa professionals review committee.

“*Participant*” means an applicant or person licensed under Iowa Code chapter 147, 153, 154A, 154E, 155, or 155A who self-reports a potential impairment to the program, is referred to the program by the board, or signs an initial agreement or contract with the committee.

“*Self-report*” means written notification provided by the licensee to the board or committee that the licensee has been, is, or may be impaired. Information relative to impairment or a potential impairment provided on a license application or a renewal form may be considered a self-report. A self-report can be received even if the applicable licensing board has received a complaint or a third party has alleged the same.

645—16.2(272C) Composition of the committee. The division of licensing shall appoint members of the committee.

16.2(1) Membership. The committee may be composed of, but not limited to, members with the following qualifications:

- a. A licensed practitioner who has expertise in the area of substance abuse and addiction treatment.
- b. A licensed practitioner who has expertise in the diagnosis and treatment of psychological disorders and disabilities.
- c. A specialty board-certified psychiatrist who holds a current, active Iowa license as defined in 653—9.1(147,148,150,150A).
- d. A licensee who has remained free of addiction for a period of no less than two years since successfully completing a board-approved recovery program; board-ordered probation for drug or alcohol dependency, addiction or abuse; or an Iowa professionals review committee contract.
- e. An Iowa licensed physician, a physician assistant or an advanced registered nurse practitioner (ARNP) whose specialty area is family practice or who has expertise in neurological disorders.
- f. A board of pharmacy specialty certified psychiatric pharmacist who holds a current, active Iowa pharmacist license.
- g. An at-large public member.
- h. The board administrator for professional licensure or designee.

16.2(2) Officers. At the last meeting of each calendar year, the committee elects co-chairpersons to serve a one-year term beginning January 1. A chairperson, in consultation with counsel, may offer guidance and direction to staff between regularly scheduled committee meetings concerning program descriptions, interim restrictions on practice, and negotiation and execution of initial agreements and contracts on behalf of the committee. The committee retains authority to review all interim decisions at its discretion.

16.2(3) Terms. Committee members are appointed to a three-year term, for a maximum of three terms. Each term expires on December 31 of the third year of the term. Initial terms are for a period of one to three years as designated by the division to provide continuity to the committee.

645—16.3(272C) Eligibility.

16.3(1) To be eligible for participation in the program, an applicant or licensee must self-report or be referred by the board for an impairment or suspected impairment. The committee will determine for each self-report or referral whether the applicant or licensee is an appropriate candidate for participation in the program. An applicant or licensee is ineligible if the committee finds sufficient evidence that the applicant or licensee:

- a. Diverted medication for distribution to third parties or for personal profit;
- b. Adulterated, misbranded, or otherwise tampered with medication intended for a patient;
- c. Provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the committee;
- d. Participated in the program, or a similar program offered by another state, without success;
- e. Failed to sign an initial agreement or a contract when offered by the committee; or

f. Caused injury or harm to a patient or client.

16.3(2) Discretion. Eligibility of a person to participate in the program is at the sole discretion of the committee. No person is entitled to participate in the program.

16.3(3) Limitations. The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the program. Participation in the program shall not relieve the licensee's board of any duties or divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant will be referred to the board for appropriate action.

645—16.4(272C) Terms of participation. A participant is responsible for complying with the terms of participation established in the initial agreement and the contract, and for all expenses incurred to comply with the terms imposed by the program. Terms of participation specified in the contract shall include, but not be limited to:

16.4(1) Duration. The length of participation in the program is determined by the committee and will vary depending upon the recommendations of an approved evaluator and review of all relevant information.

16.4(2) Noncompliance. Participants are responsible for notifying the committee of any instance of noncompliance including, but not limited to, a relapse. Notification of noncompliance made to the IPRC by the participant, a monitoring provider, or another party may result in notice to the board for the filing of formal charges or other action the board deems appropriate.

16.4(3) Practice restrictions. The IPRC may impose practice restrictions on a participant as a term of the initial agreement or contract until such time as an approved evaluator and the IPRC determines, based on all relevant information, that the participant is capable of practicing with reasonable safety and skill. Participation in the program requires that participants agree to restrict practice in accordance with a request from the IPRC. If a participant refuses to agree to or comply with the restrictions established in the initial agreement or contract, the committee will refer the practitioner to the board for appropriate action.

645—16.5(272C) Confidentiality. Information in the possession of the board or the committee is subject to the confidentiality requirements of Iowa Code section 272C.6.

16.5(1) Program participants must report their participation to the applicable monitoring program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

16.5(2) The committee is authorized to communicate information about a participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the contract.

16.5(3) The committee is authorized to communicate information about a program participant to the board in the event a participant does not comply with the terms of the contract as set forth in rule 701—16.4(272C). The committee may provide the board with a participant's program file when the committee refers the case to the board for noncompliance. If the board initiates disciplinary action against a licensee as a result of the noncompliance, the board may include in the public disciplinary documents information about a licensee's participation in the program.

16.5(4) The committee is authorized to communicate information about a current or former program participant to the board if reliable information held by the committee reasonably indicates that a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include in the public disciplinary documents information about a licensee's participation if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

These rules are intended to implement Iowa Code chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 19
“Licensure by Verification and of Applicants With Work Experience”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 272C and 2020 Iowa Acts, House File 2627

Public Hearing

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

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:7324359836726)

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

This chapter provides an alternative pathway to licensure. This alternative option streamlines the process for individuals who are licensed in another state to be licensed in Iowa. The requirements set out in this chapter ensure licensees have proper skills to practice. The chapter provides for certain criteria to be assessed, including prior discipline, proof of residency and work experience, in order to protect the public.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees and the agency have costs associated with this rulemaking. Licensees incur fees for licensure upon application in the State of Iowa. Those fees are set out by rule.

The Department utilizes staff members to process the applications, respond to inquiries and manage phone calls. Staff salaries to support the work of the Department are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

Licensees benefit from this rulemaking because it provides an alternative path for those licensees that already have a license in another state. The licensees that qualify for license by verification are able to apply for an Iowa license without going through all of the steps of the initial application process. This saves the licensee time and expense.

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

- Quantitative description of impact:

The Department does not have an exact number of licensees that have been licensed by verification as the licensing database does not differentiate between traditional licensure and alternative pathways. An estimated 35 licensees have been successfully licensed by verification since the inception of the statute.

- Qualitative description of impact:

In order to regulate and license the professions as directed in statute, base standards for licensure are critical to protecting the public safety. This rulemaking allows for individuals with licenses in other states to apply for licensure in Iowa through a streamlined verification process. The streamlined process allows for quicker licensing and also allows more professionals for the public to access to meet their critical needs.

3. Costs to the State:

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

Costs to the agency include the staff time needed to process license applications. The DIAL Licensing Division employs 5.0 full-time equivalent (FTE) positions dedicated to processing all licensure applications for those professions regulated in the Professional Licensure Division[645]. Staff salaries to support the work of the Department are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Staff salaries to support the work of the Department are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

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

While there are no costs to the public to enact this rulemaking, there are costs to the licensee. Licensees must pay licensing application fees in order to utilize this chapter. Licensing fees vary depending on the profession and are set by separate rule. The Department believes the benefits associated with license application justify the costs. In order to regulate and license professions, base standards have to be set to ensure public safety. The licensing fees paid through this rule, as well as any other licensing application, are paid to the Licensing and Regulation Fund established in Senate File 557. This Fund covers the operations of the regulated professional licensure boards.

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

The boards have not identified a less restrictive alternative to the requirements for licensure by verification as these rules already reflect a streamlined licensure process.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
The boards have not identified a less restrictive alternative to the requirements for licensure by verification as these rules already reflect a streamlined process for licensure.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
This rulemaking implements recent legislation, 2020 Iowa Acts, House File 2627. The boards were not able to identify a less restrictive alternative that would also ensure public safety.

Small Business Impact

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

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

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

This rulemaking benefits licensees who may own or work for small businesses because it provides a more efficient means for licensees to obtain their Iowa license if they are already licensed in another state and meet certain qualifications. This cuts down on the time and expenses the small business may have to wait to engage in business in Iowa.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19

LICENSURE BY VERIFICATION AND OF APPLICANTS WITH WORK EXPERIENCE

645—19.1(272C) Licensure by verification. Licensure by verification is available in accordance with the following.

19.1(1) Eligibility. A person may seek licensure by verification if the person is licensed in at least one other jurisdiction that has a scope of practice substantially similar to that of Iowa.

19.1(2) Board application. The applicant must submit the following:

- a. A completed application.
- b. Payment of the application fee.
- c. Completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check, if required for initial licensure by the board.
- d. An attestation that the applicant's license in that jurisdiction complies with the requirements of Iowa Code section 272C.12.
- e. A copy of the complete criminal record if the applicant has a criminal history.
- f. A copy of the relevant disciplinary documents if another jurisdiction has taken disciplinary action against the applicant.
- g. A written statement from the applicant detailing the scope of practice in the other state.
- h. Copies of relevant laws setting forth the scope of practice in the other state.

19.1(3) *Applicants with prior discipline.* If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person who has had a license revoked, or who has voluntarily surrendered a license, in another jurisdiction is ineligible for licensure by verification.

19.1(4) *Applicants with pending licensing complaints or investigations.* If an applicant is currently the subject of a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

19.1(5) *Compact privileges.* A person who has a privilege to practice in Iowa by virtue of an interstate licensure compact is ineligible for licensure by verification. Licenses issued pursuant to this rule do not grant privileges to practice in any other jurisdiction pursuant to any interstate licensure compact.

645—19.2(272C) Applicants with work experience in jurisdictions without licensure requirements.

19.2(1) *Work experience.* An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a professional license to practice in the profession may be considered to have met any educational and training requirements if the person has at least three years of work experience with a scope of practice substantially similar to that of the profession for which a license in Iowa is sought. The three years of work experience must be within the four years preceding the date of application for initial licensure. The applicant must satisfy all other requirements, including passing any required examinations, to receive a license.

19.2(2) *Required documentation.* An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements shall carry the burden of proving all of the following by submitting relevant documents as part of a completed license application:

- a.* Proof of Iowa residency.
- b.* Proof of three or more years of work experience within the four years preceding the application for licensure.
- c.* Proof that the work experience was in a practice with a scope of practice substantially similar to that for the license sought in Iowa.

These rules are intended to implement 2020 Iowa Acts, House File 2627.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 31
“Licensure of Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and
Assistant Behavior Analysts”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 154D, and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154D, and
272C

Public Hearing

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

November 21, 2023
9:40 to 10 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
PH: 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets minimum standards for entry into the professions of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. Iowa residents, licensees and employers benefit from the rulemaking as it articulates the processes by which individuals apply for licensure in these professions in the State of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no known direct cost to the general public, but there is a cost to the applicant because compliance with the minimum requirements to enter into the profession is at the expense of the licensee. The fee for initial licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts is \$120 and the renewal fee is \$120 in the State of Iowa.

Iowa's initial licensure application process is similar to those implemented by other state boards of behavioral science. The application fees vary by state, however. The application fees by state for initial licensure as a mental health counselor are as follows:

Nebraska: \$155

Minnesota: \$400

Illinois: \$150

South Dakota: \$225

Kansas: \$50

Missouri: \$100

The application fees by state for initial licensure as a marital and family therapist are as follows:

Nebraska: \$155

Minnesota: \$125

Illinois: \$100

South Dakota: \$225

Kansas: \$50

Missouri: \$100

The application fees for initial licensure as a behavior analyst are as follows:

Nebraska: A license cost is not found yet because Nebraska just implemented licensure this year.

Minnesota: No license.

Illinois: A license cost is not found yet. Illinois implemented licensure last year.

South Dakota: \$350

Kansas: \$70

Missouri: \$150

The licensee would also incur costs related to educational requirements and examination requirements. The Board of Behavioral Science has not identified an exact cost of education for these fields because costs vary depending on the school the licensee chooses to attend to meet the requirements. Examination costs are consistent across states that have a national exam. The fee for the mental health counselor examination is \$275, the fee for the marital and family therapist examination is \$365, the fee for the behavior analyst examination is \$350, and the fee for the assistant behavior analyst examination is \$300.

Board staff review applications for initial and renewal licenses, answer inquiries on licensing, and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.35 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The public and professionals benefit from the proposed rule. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public.

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

- Quantitative description of impact:

Educational institutions provide the academic training for mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts to obtain their license in the State of Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. Because the cost of education is so variable depending on the institution the person attends, the Board is unable to put an exact cost on the cost of education or examination preparation.

Licensing fees are \$120 for an initial license and \$120 for each renewal period.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would be an increase in the potential for injury to the public by a licensee who is not qualified to perform work in the field.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals and reinstatements. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.35 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. There is no anticipated impact of this rulemaking on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the professions, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the State of Iowa are similar to those of surrounding states. The surrounding states all require similar licensing procedures for mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts.

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

The Board has not identified a more cost-effective alternative to the licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, the Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). DIAL — Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. This rulemaking supports this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is

provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts in other states, which makes obtaining licensure in multiple states simpler for applicants.

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

The Board has not identified a more cost-effective alternative to the licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of optometrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, the Board is now part of DIAL. DIAL — Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule edits support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

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

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

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

The proposed rulemaking relates to high-stakes public safety concerns which are present whether the business is a small business or a large organization. The rule is meant to ensure public safety in terms of licensing requirements for mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. While some mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts are likely running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 31 and adopt the following **new** chapter in lieu thereof:

BEHAVIORAL SCIENTISTS

- CHAPTER 31 LICENSURE OF MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR ANALYSTS
- CHAPTER 32 CONTINUING EDUCATION FOR MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS
- CHAPTER 33 DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR ANALYSTS

CHAPTER 31

LICENSURE OF MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR ANALYSTS

645—31.1(154D) Definitions. For purposes of these rules, the following definitions shall apply:

“*ACA*” means the American Counseling Association.

“*Active license*” means a license that is current and has not expired.

“*AMFTRB*” means the Association of Marital and Family Therapy Regulatory Boards.

“*AMHCA*” means the American Mental Health Counselors Association.

“*BACB*” means the Behavior Analyst Certification Board.

“*Board*” means the board of behavioral science.

“*CCE*” means the Center for Credentialing and Education, Inc.

“*Course*” means three graduate semester credit hours.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Licensee*” means any person licensed to practice as a marital and family therapist, mental health counselor, behavior analyst, or assistant behavior analyst in the state of Iowa.

“*License expiration date*” means September 30 of even-numbered years for marital and family therapists and mental health counselors, and means the expiration date of the certification issued by the Behavior Analyst Certification Board for behavior analysts and assistant behavior analysts.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is or has been licensed in another state.

“*Mental health setting*” means a behavioral health setting where an applicant is providing mental health services including the diagnosis, treatment, and assessment of emotional and mental health disorders and issues.

“*NBCC*” means the National Board for Certified Counselors.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—31.13(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in rule 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.

“*Temporary license*” means a license to practice marital and family therapy or mental health counseling under direct supervision of a qualified supervisor as determined by the board by rule to fulfill the postgraduate supervised clinical experience requirement in accordance with this chapter.

645—31.2(154D) Requirements for permanent and temporary licensure as a mental health counselor or marriage and family therapist. The following criteria shall apply to licensure:

31.2(1) The applicant shall submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.3(147,154D).

31.2(2) The applicant for a mental health counseling license shall submit two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). The cost of the criminal history background check by the DCI and the FBI shall be assessed to the applicant.

31.2(3) No application will be considered by the board until official copies of academic transcripts sent directly from the school to the board of behavioral science have been received by the board or an equivalency evaluation completed by the Center for Credentialing and Education, Inc. (CCE) has been received by the board. The applicant shall present proof of meeting the educational requirements. Documentation of such proof shall be on file in the board office with the application and include one of the following:

a. For licensure as a marital and family therapist, an official transcript verifying completion of a marital and family therapy program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) as defined in subrule 31.5(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.5(2).

b. For licensure as a mental health counselor, an official transcript verifying completion of a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) as defined in subrule 31.6(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.6(2).

31.2(4) The candidate is required to take the examination(s) provided in rule 645—31.3(1).

31.2(5) The candidate for permanent licensure shall submit the required attestation of supervision forms documenting clinical experience as required in rule 645—31.7(154D).

31.2(6) The candidate for temporary licensure must submit a supervision plan to the board prior to licensure. Within 30 days of completion of the supervised clinical experience, the attestation of the completed supervised experience must be submitted to the board office. The temporary licensee shall remain under supervision until a permanent license is issued.

31.2(7) A temporary license is only valid for the purpose of fulfilling the postgraduate supervised clinical experience requirement. It is valid for three years and may be renewed at the discretion of the board.

31.2(8) A licensee who was issued an initial permanent license within six months prior to the renewal shall not be required to renew the license until the renewal date two years later.

31.2(9) An application for a temporary or permanent 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.

645—31.3(154D) Examination requirements for mental health counselors and marital and family therapists. The following criteria shall apply to the written examination(s):

31.3(1) The applicant will take and pass the following examinations in order to qualify for licensing:

a. For a marital and family therapist license, the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) Examination in Marital and Family Therapy.

b. For a mental health counselor license or a temporary mental health counselor license, the National Counselor Examination (NCE) of the NBCC or the National Clinical Mental Health Counselor Examination (NCMHCE) of the NBCC. For a temporary mental health counselor license, the NCE of the NBCC or the NCMHCE of the NBCC.

c. For a mental health counselor license, the NCMHCE of the NBCC.

31.3(2) The passing score on the written examination shall be the passing point criterion established by the appropriate national testing authority at the time the test was administered.

31.3(3) An applicant who is requesting approval to take the licensure examination prior to graduation shall:

a. Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.3(147,154D).

b. Have a letter on official school letterhead sent directly from the program director to the board indicating that the applicant is in good academic standing; that the applicant will graduate from the program within three months of the date on the letter; and the applicant's anticipated date of graduation.

645—31.4(147) Professional counselor licensing compact. The rules of the Counseling Compact Commission are incorporated by reference.

645—31.5(154D) Educational qualifications for marital and family therapists. The applicant must complete the required semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in subrule 31.5(2); no course may be used more than once. The applicant must present proof of completion of the following educational requirements for licensure as a marital and family therapist:

31.5(1) Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

31.5(2) Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education, which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. Graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of the graduates' educational credentials by the Center for Credentialing and Education, Inc. (CCE), website cce-global.org.

645—31.6(154D) Educational qualifications for mental health counselors. The applicant must complete three semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in subrule 31.6(2); no course may be used to fulfill more than one content area. The applicant must present proof of completion of the following educational requirements for licensure as a mental health counselor:

31.6(1) Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or equivalent quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2012, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

31.6(2) Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree or a doctoral degree from a college or university accredited by an agency recognized by the United States Department of Education which is content-equivalent to a master's degree in counseling with emphasis in mental health counseling. Graduates from non-CACREP accredited mental health counseling programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), website cce-global.org.

31.6(3) *Foreign-trained marital and family therapists or mental health counselors.* Foreign-trained marital and family therapists or mental health counselors shall:

a. Provide an equivalency evaluation of their educational credentials by the following: International Educational Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone (310)258-9451; website www.ierf.org or email at info@ierf.org. A candidate shall bear the expense of the curriculum evaluation.

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

645—31.7(154D) Supervised clinical experience. An applicant for licensure as a mental health counselor or marital and family therapist must complete a supervised clinical experience as set forth in this rule.

31.7(1) *Minimum requirements.* The supervised clinical experience must satisfy all of the following requirements:

a. Timing. The supervised clinical experience cannot begin until after all graduate coursework has been completed with the exception of the thesis.

b. Duration. The supervised clinical experience must be for a minimum of two years.

c. Minimum number of hours. The supervised clinical experience must consist of at least 3,000 hours of practice.

d. Minimum number of direct client hours. The supervised clinical experience will consist of at least 1,500 hours of direct client contact.

e. Minimum number of direct supervision hours. The supervised clinical experience will consist of at least 110 hours of direct supervision equitably distributed throughout the supervised clinical experience, including at least 24 hours of live or recorded direct observation of client interaction. A maximum of 50 hours of direct supervision may be obtained through group supervision. Direct supervision can occur in person or by using videoconferencing. After 110 hours of direct supervision are complete, ongoing direct supervision will continue to occur for the remainder of the supervised clinical experience.

f. Number of supervisors. A supervisee may utilize a maximum of four supervisors at any given time. A supervisee is responsible for notifying each supervisor if another supervisor is also being utilized to allow for coordination as appropriate.

g. Number of supervisees. A supervisor will determine the number of supervisees who can be supervised safely and competently and will not exceed that number.

h. Content. The supervised clinical experience must involve performing psychosocial assessments, diagnostic practice using the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), and providing treatment, including the establishment of treatment goals, psychosocial therapy using evidence-based therapeutic modalities, and differential treatment planning. The supervised clinical experience will prepare the supervisee for independent practice and must include training on practice management, ethical standards, legal and regulatory requirements, documentation, coordination of care, and self-care.

31.7(2) *Eligible supervisors.* A supervisor must satisfy all of the following requirements:

a. Hold an active license as an independent level social worker, mental health counselor, or marital and family therapist in Iowa.

b. Have a minimum of three years of independent practice.

c. Have completed at least a six-hour continuing education course in supervision or one graduate-level course in supervision.

d. Must be knowledgeable of the applicable ethical code and licensing rules governing the supervisee.

Any request for a supervisor who does not meet these requirements must be approved by the board before supervision begins.

31.7(3) *Supervision plan.* Prior to beginning supervision, the supervisee will submit a written supervision plan to the board using the current form published by the board. The supervisee will also submit a written supervision plan to the board prior to beginning supervision with a new supervisor.

31.7(4) *Supervision report.* When supervision is complete, or when a supervisor ceases providing supervision to the supervisee, the supervisee will ensure a completed supervision report using the current form published by the board is submitted to the board. If the supervisor reports that the supervisee is not adequately prepared for independent licensure, or reports violations of the board's rules or applicable ethical code, the board may require the supervisee to complete additional supervision or training as deemed appropriate prior to licensure.

31.7(5) *Supervised clinical experience in other states.* An applicant who completed some or all of the supervised clinical experience in another state without obtaining licensure in that state should contact the board to determine whether some or all of the supervised clinical experience that has been completed can be used to qualify for licensure in Iowa.

31.7(6) *Grandfather clause.* Any new or additional requirements imposed by this rule do not apply to supervision that started prior to July 20, 2022.

645—31.8(154D) Licensure by endorsement for mental health counselors and marital and family therapists. An applicant who has been a licensed marriage and family therapist or mental health counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

31.8(1) The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

- a. Meets the requirements of rule 645—31.2(154D); and
- b. Provides verification of license from the jurisdiction in which the applicant has been most recently licensed, sent directly from the jurisdiction(s) to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

31.8(2) In lieu of meeting the requirements of subrules 31.2(4) and 31.2(5), applicants who meet the qualifications below may instead submit documentation demonstrating how each of the qualifications below is satisfied:

- a. The applicant possesses a master's degree or higher in mental health counseling or marital and family therapy or an equivalent counseling-related field; and
- b. The applicant does not have any past or pending disciplinary action from any state licensing boards related to any mental health counseling or marital and family therapy license currently or previously held by the applicant.

31.8(3) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—31.9(147) Licensure of behavior analysts and assistant behavior analysts.

31.9(1) The applicant must submit a completed application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.3(147,154D).

31.9(2) For licensure as a behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified behavior analyst or board-certified behavior analyst-doctoral. For licensure as an assistant behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified assistant behavior analyst.

645—31.10(147) License renewal for mental health counselors and marriage and family therapists.

31.10(1) The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of an even-numbered year and end on September 30 of

the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

31.10(2) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—32.2(272C). 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.

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 next renewal two years later.

31.10(3) 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 as required by Iowa Code section 232.69(3) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph "d."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph "d."

c. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" and "b," including program date(s), content, duration, and proof of participation.

d. 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 4.

e. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "d."

31.10(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

31.10(5) A person licensed to practice as a marital and family therapist or mental health counselor shall keep the person's license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

31.10(6) 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 5.3(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

31.10(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice mental health counseling or marital and family therapy in Iowa until the license is reactivated. A licensee who practices mental health counseling or marital and family therapy in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—31.11(272C) Initial licensing, reactivation, and license renewal for behavior analysts and assistant behavior analysts.

31.11(1) An initial license for a behavior analyst or assistant behavior analyst shall be issued with the same expiration date as the applicant's current certification issued by BACB.

31.11(2) The biennial license renewal period for a behavior analyst or assistant behavior analyst shall run concurrent with the licensee's BACB certification. Each license renewed shall be given the expiration date that is on the licensee's current BACB certification. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

31.11(3) A licensee seeking renewal shall:

- a. Meet the continuing education requirements required by BACB to renew a certification.
- b. Maintain current certification as a board-certified behavior analyst, board-certified behavior analyst-doctoral, or board-certified assistant behavior analyst issued by BACB.
- c. Submit the completed renewal application and renewal fee before the license expiration date.

31.11(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

31.11(5) A person licensed as a behavior analyst or assistant behavior analyst shall keep the person's license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

31.11(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.3(5). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

31.11(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not engage in the practice of applied behavior analysis for which a license is required in Iowa until the license is reactivated. A licensee who practices applied behavior analysis in a capacity that requires licensure in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

31.11(8) Reactivation. To apply for reactivation of an inactive license, a licensee shall submit a completed renewal application and proof of current certification and shall be assessed a reactivation fee as specified in 645—subrule 5.3(6).

645—31.12(147) Licensee record keeping.

31.12(1) A licensee shall maintain sufficient, timely, and accurate documentation in client records.

31.12(2) For purposes of this rule, "client" means the individual, couple, family, or group to whom a licensee provides direct clinical services.

31.12(3) A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

31.12(4) Clinical services. A licensee who provides clinical services in any employment setting, including private practice, shall:

a. Store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all client records for a minimum of seven years after the date of the client's discharge or death, or, in the case of a minor, for three years after the client reaches the age of majority under state law or seven years after the date of the client's discharge or death, whichever is longer.

b. Maintain timely records that include subjective and objective data, an assessment, a treatment plan, and any revisions to the assessment or plan made during the course of treatment.

c. Provide the client with reasonable access to records concerning the client. A licensee who is concerned that a client's access to the client's records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. A licensee may limit a client's access to the client's records, or portions of the records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both the client's request for access and the licensee's rationale for withholding some or all of a record shall be documented in the client's records.

d. Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

31.12(5) Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

31.12(6) *Correction of records.*

a. Hard-copy records. Original notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the original record, it must be crossed out with a single, nondeleting line and be initialed and dated by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

31.12(7) Confidentiality and transfer of records. Marital and family therapists or mental health counselors shall preserve the confidentiality of client records in accordance with their respective rules of conduct and with federal and state law. Upon receipt of a written release or authorization signed by the client, the licensee shall furnish such therapy records, or copies of the records, as will be beneficial for the future treatment of that client. A fee may be charged for duplication of records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

31.12(8) *Retirement, death or discontinuance of practice.*

a. If a licensee is retiring or discontinuing practice and is the owner of a practice, the licensee shall notify in writing all active clients and, upon knowledge and agreement of the clients, shall make reasonable arrangements with those clients to transfer client records, or copies of those records, to the succeeding licensee.

b. Upon a licensee's death:

(1) The licensee's employer or representative must ensure that all client records are transferred to another licensee or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The licensee's employer or representative shall notify each active client that the client's records will be transferred to another licensee or entity that will retain custody of the records and that, at the client's written request, the records will be sent to the licensee or entity of the client's choice.

31.12(9) Nothing stated in this rule shall prohibit a licensee from conveying or transferring the licensee's client records to another licensed individual who is assuming a practice, provided that written notice is furnished to all clients.

645—31.13(17A,147,272C) **License reactivation for mental health counselors and marital and family therapists.** To apply for reactivation of an inactive license, a licensee shall:

31.13(1) Submit a reactivation application.

31.13(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

31.13(3) Provide:

a. Verification of license from the jurisdiction in which the applicant has been most recently licensed, sent directly from the jurisdiction(s) to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;

- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license; and

b. Verification of a current active license in another jurisdiction at the time of application or verification of completion of continuing education taken within two years of the application. If the license has been inactive for less than five years, the applicant must submit verification of 40 hours of continuing education, and if the license has been inactive for more than five years, the applicant must submit verification of 80 hours of continuing education.

645—31.14(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 rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—31.13(17A,147,272C) or subrule 31.11(8) prior to practicing mental health counseling, marital and family therapy, or applied behavior analysis in this state.

645—31.15(154D) Marital and family therapy and mental health counselor services subject to regulation. Marital and family therapy and mental health counselor services provided to an individual in this state through telephonic, electronic or other means, regardless of the location of the marital and family therapy and mental health counselor, shall constitute the practice of marital and family therapy and mental health counseling and shall be subject to regulation in Iowa.

645—31.16(154D) Temporary licensees. A temporary licensee shall engage only in the practice of marital and family therapy or mental health counseling as part of an agency or group practice with oversight over the temporary licensee. The agency or group practice shall have at least one independently licensed mental health provider. A temporary licensee shall not practice as a solo practitioner or solely with other temporary licensees.

These rules are intended to implement Iowa Code chapters 17A, 147, 154D and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 32
“Continuing Education for Marital and Family Therapists and Mental Health Counselors”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154D, 147, 272C, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154D, 147, 272C, and 17A

Public Hearing

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

November 21, 2023
9:40 to 10 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
PH: 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This rulemaking sets forth continuing education requirements for mental health counselors and marital and family therapists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rule, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that mental health counselors and marital and family therapists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Board of Behavioral Science is not privy to exact costs. Licensees have multiple options. Courses can range anywhere from \$100 per hour to \$0 per hour. The Board allows for online coursework, which increases the availability of free or low-cost options.

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

The intended benefit of continuing education is to ensure that mental health counselors and marital and family therapists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

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

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offers these courses, so the Board is not privy to exact costs. Courses can range anywhere from \$100 per hour to \$0 per hour. The Board allows for online coursework, which increases the availability of free or low-cost options. The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 40 hours of continuing education for these license types every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures that licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.35 full-time equivalent (FTE) position, which includes questions from the public and licensees such as practice standards, continuing education, board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities which provide continuing education opportunities, not the State. There is not an anticipated impact on this rulemaking to state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board has not recommended a reduction in hours.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

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

Less restrictive alternatives would be to reduce the amount of continuing education required. A review of surrounding states has shown that Iowa is in line with neighboring jurisdictions. Iowa requires 40 hours of continuing education every two years. Illinois and Kansas require 30 hours;

Nebraska requires 32 hours; and Minnesota, Missouri, and South Dakota require 40 hours. Staff held conversations with Board members inquiring if the Board would recommend lowering the continuing education requirements. The Board did not recommend a change in continuing education hours.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board inquiring if the Board would recommend lowering the continuing education requirements. The Board has considered a change of the total continuing education hours, considering the frequency and the safety of the public. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

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

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

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

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

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

Mental health counselors and marriage and family therapists practice in a number of settings including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. While some licensees are likely running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Conversely, the entities that provide continuing education may experience a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32 CONTINUING EDUCATION FOR MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS

645—32.1(272C) Definitions. For the purpose of these rules, the following definitions will apply:

“Active license” means the license is current and has not expired.

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

“*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 behavioral science.

“*Continuing education*” means planned, organized learning acts 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.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of 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.

“*Independent study*” means a continuing education program or activity that a licensee pursues autonomously that includes a posttest and meets the general criteria in subrule 32.3(1).

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice marital and family therapy or mental health counseling in the state of Iowa.

645—32.2(272C) Continuing education requirements.

32.2(1) The biennial continuing education compliance period shall extend for a 25-month period beginning on September 1 of the even-numbered year and ending on September 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a licensee in this state is required to complete a minimum of 40 hours of continuing education approved by the board.

32.2(2) Requirements of 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 any time from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

32.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

32.2(4) No hours of continuing education will be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

32.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—32.3(154D,272C) Standards.

32.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters.
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance including:
 - (1) Date(s), location, course title, presenter(s);
 - (2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

32.3(2) Specific criteria. Continuing education hours of credit may be obtained by completing the following:

a. Attendance at workshops, conferences, symposiums and webinars.
b. Academic courses. Official transcripts indicating successful completion of academic courses which apply to the field of mental health counseling or marital and family therapy, as appropriate, will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

c. Completion of independent study courses that meet the general criteria in subrule 32.3(1).
d. A maximum of 20 hours of continuing education credit may be granted for any of the following activities not to exceed a combined total of 20 hours:

(1) Presenting professional programs which meet the criteria in rule 645—32.3(272C). Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. Presentation at a professional program does not include teaching class at an institution of higher learning at which the applicant is regularly and primarily employed. Presentations to lay public are excluded.

(2) Scholarly research or other activities, the results of which are published in a recognized professional publication such as a refereed journal, monograph or conference proceedings. The scholarly research must be integrally related to the practice of the professions.

(3) Publication in a refereed journal. The article in a refereed journal for which the licensee is seeking continuing education credit must be integrally related to the practice of the professions.

(4) Teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of the course.

(5) Authoring papers, publications, and books. The licensee will receive five hours of credit per page with a maximum of 20 hours of credit.

(6) Serving on a state or national professional board. The licensee will receive a maximum of three hours of credit.

32.3(3) Required specific criteria:

a. Three hours of the 40 continuing education hours will be in ethics.
b. Effective with the biennial continuing education compliance period that begins October 1, 2022, persons serving in a supervisory role must complete three hours of continuing education in supervision.

c. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats adults in Iowa shall complete, within six months of employment or prior to the expiration of a current certification, an initial two-hour course in dependent adult abuse training for mandatory reporters offered by the department of health and human services. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certification.

d. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats children in Iowa shall complete, within six months of employment or prior to the expiration of a current certification, an initial two-hour course in child abuse training for mandatory reporters offered by the department of health and human services. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certification.

These rules are intended to implement Iowa Code section 272C.2 and chapter 154D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 33
“Discipline for Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and
Assistant Behavior Analysts”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154D, 272C, 147, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154D, 272C, 147, and
17A

Public Hearing

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

November 21, 2023
9:40 to 10 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
PH: 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This rulemaking provides protection to Iowans because it publicly defines disciplinary options when a mental health counselor, marital and family therapist, behavior analyst, or assistant behavior analyst fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the State of Iowa. When professional standards are not met, a licensee can be subject to discipline against a license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the Board of Behavioral Science and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. This chapter is related to standard of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care in medical journals, etc. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.35 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees such as practice standards, continuing education, board meeting administration, etc. The Board receives a number of complaints each year. In 2021 the Board received 55 complaints, and in 2022 it received 50. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The intended benefit of this rule is to ensure public safety and maintain a high level of care for Iowans. The Board receives a number of complaints each year and regularly issues discipline. In 2021 the Board received 55 complaints, and in 2022 it received 50. The Board initiated 11 public disciplinary actions during that two-year period. The Board has approximately 3,200 active licensees.

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

- Quantitative description of impact:

The Board has not identified a less restrictive alternative for public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would be an increase in the potential for injury to the public and leaving the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.35 FTE position.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, no civil penalties were paid into the General Fund from disciplinary fees assessed by the Board.

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

The Board receives a number of complaints each year. In 2021 the Board received 55 complaints, and in 2022 it received 50. The Board initiated 11 public disciplinary actions during that two-year period. Licensees routinely provide mental health services to Iowans. Licensees who fail to meet practice standards have the potential to inflict serious harm to vulnerable Iowans who receive their services, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative for public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the mental health counselor, marital and family therapist, behavior analyst, or assistant behavior analyst professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

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

There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important to ensure Iowans receive services from competent practitioners.

Small Business Impact

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

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

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

The proposed rulemaking relates to high-stakes public safety concerns, which are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of practice standards for mental health counselors, marital and family therapists, behavior analysts, or assistant behavior analysts. While some mental health counselors, marital and family therapists, behavior analysts, or assistant behavior analysts are likely running a small business of their own, some also work for large organizations, such as hospital systems. To exempt small businesses from adhering

to this rulemaking would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33
DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS,
MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS,
AND ASSISTANT BEHAVIOR ANALYSTS

645—33.1(154D,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—33.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in rule 645—Chapter 13:

33.1(1) Failure to comply with the national association's code of ethics.

a. Marital and family therapists. Failure to comply with the current American Association for Marriage and Family Therapy (AAMFT) Code of Ethics, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the AAMFT's website.

b. Mental health counselors. Failure to comply with the current Code of Ethics of the American Counseling Association (ACA), which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the ACA website.

c. Behavior analysts and assistant behavior analysts. Failure to comply with the current Behavior Analyst Certification Board (BACB) Professional and Ethical Compliance Code for Behavior Analysts, which is hereby adopted by reference. Copies of the Professional and Ethical Compliance Code may be obtained from the BACB website.

33.1(2) Sexual relationships.

a. Current clients. A licensee shall not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A licensee shall not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A licensee shall not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's spouse or significant other.

d. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's relative within the second degree of consanguinity (client's parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A licensee shall not provide clinical services to an individual with whom the licensee has had prior sexual contact.

33.1(3) Physical contact. A licensee shall not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A licensee who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries which govern such contact.

This rule is intended to implement Iowa Code chapters 17A, 147, 154D and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 41
“Licensure of Chiropractic Physicians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 151, 147 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 151

Public Hearing

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

November 21, 2023
12:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

These proposed rules establish minimum standards for obtaining licensure as a chiropractor. Iowa residents, licensees, and employers benefit from the rule as it articulates the processes by which individuals apply for licensure, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the practice has minimum competency. Requirements include the application process, minimum educational qualifications and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant to comply with the minimum requirements to enter the profession. All states, at a minimum, require applicants to complete a doctor of chiropractic degree program from an accredited college. The national examination proctored

by the National Board of Chiropractic Examiners consists of passing four parts and costs the applicant \$2,580. The application fee is \$120 for a biannual license.

Licensure costs run slightly below surrounding states with the national exam fee remaining consistent. In Nebraska, applicants must pay an application fee of \$144; in Minnesota, applicants must pay an application fee of \$250.

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

The public and professionals benefit from the proposed rulemaking. All 50 states and the District of Columbia have established minimum licensing requirements to ensure that practitioners are competent to practice. Without an established threshold to enter the profession, the health, welfare, and safety of the public would be at risk.

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

- Quantitative description of impact:

Accredited educational institutions provide the academic training for chiropractors to obtain licensure in the state of Iowa. Additional private industries and educational institutions provide examinations and materials to prepare for the exam.

Because the cost of education is so variable depending on the institution the person attends, the Board of Chiropractic is unable to put an exact cost on the cost of education or exam preparation. Licensing fees are \$120 for an initial license and \$120 for each renewal period.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals and reinstatements. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees, not the State. There is no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. Since 2021, there were 52 complaints filed. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing high-quality patient care to Iowans. These regulations help to ensure chiropractors understand their obligations to safely manage and treat patients within their scope of practice. Costs to licensees in the state of Iowa are similar to those of surrounding states.

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

The Board has not identified a more cost-effective alternative to the licensure of chiropractors. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is

provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession; however, the Board would be concerned about the public safety of Iowans in that scenario. Doing so would also place Iowa out of line with the rest of the country. The regulation and licensure of chiropractors is consistent across the country.

Due to state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the licensure of chiropractors. The Board believes all current requirements ensure public safety and a minimum competency of care afforded to Iowans. Licensure requirements could be reduced but would implicate a lower standard of care for Iowans. Additionally, the rules provide consistency related to the licensure of optometrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

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

The Board has not identified a more cost-effective alternative to the licensure of chiropractors. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of chiropractors in other states, which makes obtaining licensure in multiple states simpler for applicants.

DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize Board processes across all professional licensing boards. These rule revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

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

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

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

The proposed rulemaking relates to high-stakes public safety concerns which are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for chiropractors. While some chiropractors may be self-employed in a private clinic, others may work in a hospital setting. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 41 and adopt the following **new** chapter in lieu thereof:

CHIROPRACTIC

| | |
|------------|--|
| CHAPTER 41 | LICENSURE OF CHIROPRACTIC PHYSICIANS |
| CHAPTER 42 | COLLEGES FOR CHIROPRACTIC PHYSICIANS |
| CHAPTER 43 | PRACTICE OF CHIROPRACTIC PHYSICIANS |
| CHAPTER 44 | CONTINUING EDUCATION FOR CHIROPRACTIC PHYSICIANS |
| CHAPTER 45 | DISCIPLINE FOR CHIROPRACTIC PHYSICIANS |

CHAPTER 41
LICENSURE OF CHIROPRACTIC PHYSICIANS

645—41.1(151) Definitions. The following definitions will be applicable to the rules of the Iowa board of chiropractic:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the Iowa board of chiropractic.

“*Council on Chiropractic Education*” or “*CCE*” means the organization that establishes the Educational Standards of Chiropractic Colleges and Bylaws.

“*Department*” means the Iowa Department of Inspections, Appeals, and Licensing.

“*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 include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*License*” means license to practice chiropractic in Iowa.

“*Licensee*” means any person licensed to practice as a chiropractic physician in Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice chiropractic to an applicant who is or has been licensed in another state and meets the criteria for licensure in this state.

“*NBCE*” means the National Board of Chiropractic Examiners.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—41.14(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in rule 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.

“*SPEC*” means Special Purposes Examination for Chiropractic, which is an examination provided by the NBCE that is designed specifically for utilization by state or foreign licensing agencies.

645—41.2(151) Initial licensure.

41.2(1) To apply for a license, the applicant will complete an online application packet and pay the nonrefundable application fee.

a. If licensed in another jurisdiction, the applicant will complete the licensure by endorsement application and submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed.

b. A person who is licensed in another jurisdiction and cannot satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

c. An application not completed according to guidelines will not be reviewed by the board.

d. The applicant will request the accredited chiropractic school submit official copies of the applicant's transcripts to the board office.

e. The applicant will submit an official certificate of completion of 120 hours of physiotherapy that includes a practicum component from a board-approved chiropractic college.

f. The applicant will pass all parts of the NBCE examination as outlined in rule 645—41.3(151).

g. The applicant will submit a copy of the chiropractic diploma.

41.2(2) Licensees who were issued their licenses within six months prior to the renewal date are not required to renew their licenses until the renewal date two years later.

41.2(3) Incomplete applications that have been on file in the board office for more than two years will be:

a. Considered invalid and destroyed; or

b. Maintained upon written request from the candidate.

41.2(4) A license will be publicly displayed in the licensee's primary place of practice.

41.2(5) Licensees are required to notify the board of chiropractic of changes in residence or place of practice within 30 days after the change of address occurs.

645—41.3(151) Examination requirements.

41.3(1) Applicants will submit the application for the NBCE examination and the fee directly to the NBCE.

41.3(2) The following criteria will apply for the NBCE:

a. Prior to July 1, 1973, applicants will provide proof of being issued a basic science certificate.

b. After July 1, 1973, applicants will provide proof of successful completion of the required examination from the NBCE. The required examination will meet the following criteria:

(1) Examinations completed after July 1, 1973, will be defined as the successful completion of Parts I and II of the NBCE examination.

(2) Examinations completed after August 1, 1976, will be defined as the successful completion of Parts I, II and Physiotherapy of the NBCE examination.

(3) Examinations completed after January 1, 1987, will be defined as the successful completion of Parts I, II, III and Physiotherapy of the NBCE examination.

(4) Examinations completed after January 1, 1996, will be defined as satisfactory completion of Parts I, II, III, IV and Physiotherapy of the NBCE examination.

645—41.4(151) Educational qualifications.

41.4(1) An applicant will present an official transcript verifying graduation from a CCE-accredited and board-approved college of chiropractic.

41.4(2) Foreign-trained chiropractic physicians will:

a. Provide an equivalency evaluation of their educational credentials processed by the International Education Research Foundation, Inc. The professional curriculum must be equivalent to that stated in these rules. The candidate will bear the expense of the curriculum evaluation.

b. Provide a copy of the certificate or diploma awarded to the applicant from a chiropractic program in the country in which the applicant was educated.

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

645—41.5(151) Temporary certificate.

41.5(1) The board may issue a temporary certificate to practice chiropractic at its discretion if the issuance is in the public interest and the applicant demonstrates a need for the temporary certificate and meets the professional qualifications for licensure.

41.5(2) Demonstrated need. An applicant must submit information explaining the demonstrated need, how the issuance would serve the public interest, the scope of practice requested, and why a temporary certificate should be granted. To meet the demonstrated need requirement, the applicant will show the need meets one of the following conditions:

- a.* The applicant will provide chiropractic services in connection with a special activity, event or program conducted in this state;
- b.* The applicant will provide chiropractic services in connection with a state emergency as proclaimed by the governor;
- c.* The applicant previously held an unrestricted license to practice chiropractic in this state and will provide gratuitous chiropractic services as a voluntary public service; or
- d.* The applicant will provide chiropractic services in connection with an urgent need.

41.5(3) Qualifications for licensure include the following:

- a.* Complete an online application packet on the Iowa Board of Chiropractic website and pay the nonrefundable application fee.
- b.* If licensed in another jurisdiction, submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed.
- c.* Provide a copy of a chiropractic diploma.

41.5(4) A temporary certificate will be issued for one year to fulfill the demonstrated need as described in subrule 41.5(2).

41.5(5) An applicant or temporary certificate holder who has been denied a temporary certificate may appeal the denial pursuant to rule 645—4.10(17A,147,272C). A temporary certificate holder is subject to discipline for any grounds for which licensee discipline may be imposed.

41.5(6) A temporary certificate holder who meets all licensure conditions as specified in rule 645—41.2(151) may obtain a permanent license in lieu of the temporary certificate. To obtain a permanent license, the applicant will submit any additional documentation required for permanent licensure that was not submitted as a part of the temporary certificate application. The applicant may receive fee credit toward the permanent licensure fee equivalent to the fee paid for the temporary certificate if the application for the permanent license and all required documentation are received by the board prior to the expiration of the temporary certificate.

645—41.6(151) License renewal.

41.6(1) The license renewal period for a license to practice begins on July 1 of an even numbered year and ends on June 30 of the next even numbered year.

41.6(2) 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.

41.6(3) A licensee applying for renewal will:

- a.* Meet the continuing education requirements of rule 645—44.2(272C) and the mandatory reporting requirements of subrule 41.8(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.* Complete the online renewal application, pay the fee, and attach certificate of completing continuing education hours on the Iowa board of chiropractic website before the expiration date.

41.6(4) Mandatory reporter training requirements.

- a.* A licensee who examines, attends, counsels, or treats children, dependent adults or both in the scope of the licensee's professional practice will complete the applicable department of health and human services training for identifying and reporting child abuse, dependent adult abuse or both. A licensee will maintain written documentation of training completion for three years. The training is not required if the licensee is engaged in active duty military service or holds a waiver from the board demonstrating a hardship in complying with these training requirements.

- b.* The board may select licensees for audit of compliance with the requirements in paragraph 41.8(4) "a."

41.6(5) A two-year license will be issued after the requirements of rule are met. If the board receives adverse information on the renewal application, the board may refer the adverse information for further consideration or disciplinary investigation.

41.6(6) Late renewal. The licensee is responsible for renewing the license prior to expiration every two years. The licensee will complete the renewal requirements and pay the late fee within the 30-day grace period.

41.6(7) Inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice until the license is reactivated.

645—41.7(17A,147,272C) Requirements for reactivation. To apply for reactivation, a licensee will:

41.7(1) Complete an online reactivation application on the Iowa board of chiropractic website and pay the nonrefundable reactivation fee.

41.7(2) Provide verification of current competence to practice as a chiropractic physician by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification. If licensed in another jurisdiction, submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed.

(2) Proof. Submit proof of completing 40 hours of continuing education within two years of application.

b. If the license has been on inactive status for more than five years, an applicant must:

(1) Send verification. Submit a license verification document that discloses if disciplinary action was taken against the applicant from every jurisdiction in which the applicant has been licensed.

(2) Submit proof of completing 40 hours of continuing education within two years of application.

(3) Send verification of passing the SPEC if the applicant does not have a current license and has not had an active license in the United States during three of the past five years.

645—41.8(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation prior to practicing in the state.

These rules are intended to implement Iowa Code chapters 17A, 147, 151 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 42
“Colleges for Chiropractic Physicians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 151, 147, and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 151

Public Hearing

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

November 21, 2023
12:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) +1 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

This proposed rulemaking is intended to establish requirements for chiropractic colleges that meet accreditation standards by the U.S. Department of Education and to support an internship program that allows students to be mentored by a licensed chiropractor.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant to comply with the minimum requirements to enter the profession. All states, at a minimum, require applicants to complete a doctorate of chiropractic degree program from an accredited college. The national examination proctored by the National Board of Chiropractic Examiners consists of passing four parts and costs the applicant \$2,580. The application fee is \$120 for a biannual license.

Licensure costs run slightly below surrounding states, with the national examination fee remaining consistent. In Nebraska, applicants must pay an application fee of \$144; in Minnesota, applicants must pay an application fee of \$250.

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

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public during their practice. Chiropractors are medical providers who require certain skills and training to effectively help and treat their patients.

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

- Quantitative description of impact:

There is no direct cost to the general public, but there is a cost to the applicant to comply with the minimum requirements to enter the profession. All states, at a minimum, require applicants to complete a doctorate of chiropractic degree program from an accredited college. The national examination proctored by the National Board of Chiropractic Examiners consists of passing four parts and costs the applicant \$2,580. The application fee is \$120 for a biannual license.

Licensure costs run slightly below surrounding states with the national exam fee remaining consistent. In Nebraska, applicants must pay an application fee of \$144; in Minnesota, applicants must pay an application fee of \$250.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

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

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. This proposed chapter further articulates the clear expectations to ensure consistency in the educational program and offers students the opportunity to have hands-on experience under the supervision of a licensed chiropractor while being gainfully employed. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on this rule to state revenues.

Staff salaries to support the work of the Board of Chiropractic (Board) are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. By integrating students into the Iowa workforce, students gain competencies and incorporate into the workforce. The Iowa chiropractic schools and internship program contribute to the growth of the profession. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of chiropractors in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the state of Iowa are similar to those of surrounding states. The surrounding states all require similar licensing procedures for chiropractors.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of chiropractors. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of chiropractors in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this board is now part of the Department of Inspections, Appeals, and Licensing. DIAL—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize Board processes across all professional licensing boards. These proposed rule revisions support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board does not believe there is a less restrictive means of ensuring proper training for chiropractic students. The current model relies on trusted, national accrediting entities to complete a comprehensive evaluation of training programs, while allowing the Board the discretion to independently evaluate factors that may be of concern with an individual program. This model ensures appropriate oversight to protect against insufficient or potentially fraudulent training programs that could place the health and safety of Iowans at risk. According to the statistics from the Federation of Chiropractic Licensing Boards, most states offer chiropractic internship programs under a licensed chiropractor.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of chiropractors. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of chiropractors in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment this board is now part of the Department of Inspections, Appeals, and Licensing. DIAL—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize Board processes across all professional licensing boards. These revisions support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rules are meant to ensure public safety in terms of licensing requirements for chiropractors. While some chiropractors likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 42 and adopt the following **new** chapter in lieu thereof:

CHAPTER 42
COLLEGES FOR CHIROPRACTIC PHYSICIANS

645—42.1(151) Definitions. For the purposes of these rules, the following definitions will apply:

“Chiropractic intern” means a chiropractic student of an approved college of chiropractic in the student’s last academic quarter, semester, or trimester of study, who is eligible for graduation from the college of chiropractic and is eligible to complete a preceptorship program, as authorized by these rules.

“Chiropractic preceptor” means a chiropractic physician licensed and practicing in Iowa pursuant to Iowa Code chapter 151, who accepts a chiropractic intern or resident into the practice for the purpose of providing the chiropractic student with a clinical experience of the practice of chiropractic, and who meets the requirements of these rules.

“Chiropractic resident” means a graduate chiropractic physician who has received a doctor of chiropractic degree from a college of chiropractic approved by the board, and who is not licensed in any state, but who is practicing under a chiropractic preceptorship authorized under these rules.

“Chiropractic student” means a student of an approved college of chiropractic.

“Council on Chiropractic Education” or *“CCE”* means the organization that establishes the Educational Standards of Chiropractic Colleges and Bylaws. A copy of the standards may be requested from the Council on Chiropractic Education (CCE).

“Preceptorship practice” means the chiropractic practice of a single chiropractic physician or group of chiropractic physicians in a particular business or clinic, into which a licensed practicing chiropractic physician has accepted a chiropractic intern or chiropractic resident for the limited purpose of providing the intern or resident with a clinical experience in the practice of chiropractic.

“60-minute hour” means at least 50 minutes of resident attendance with no more than 10 minutes for note taking and breaks.

645—42.2(151) Board-approved chiropractic colleges. Approval of a chiropractic college may be granted if the program submits proof to the board of chiropractic that the chiropractic program meets the following requirements:

42.2(1) The chiropractic college is fully accredited by the Commission on Accreditation of the Council on Chiropractic Education (CACCE), as recognized by the U.S. Department of Education.

42.2(2) The core curriculum meets the requirements of the CACCE standards and, in addition:

a. Covers a period of four academic years totaling not less than 4,000 60-minute hours in actual resident attendance;

b. Comprises a supervised course of study, including clinical practical instruction, in all of the subjects specified in Iowa Code section 151.1(3); and

c. Includes a minimum of 120 hours of physiotherapy coursework with a clinical practical component on the procedures covered in the course.

42.2(3) The chiropractic college publishes in a regularly issued catalog the requirements for graduation and degrees that are required by the Iowa board of chiropractic.

42.2(4) Transcripts include entries for all completed coursework.

645—42.3(151) Practice by chiropractic interns and chiropractic residents. A student enrolled in a board-approved chiropractic preceptorship program in the state of Iowa may treat patients without obtaining an Iowa license, provided the requirements of these rules are met.

645—42.4(151) Approved chiropractic preceptorship program. The board will approve a chiropractic college’s preceptorship program if the program meets the following requirements:

42.4(1) The preceptorship program meets current CCE standards for consumer protection.

42.4(2) The preceptorship program is an established component of the curriculum offered by a board-approved chiropractic college.

42.4(3) Chiropractic interns who participate in the preceptorship program have met all requirements for graduation from the chiropractic college except for completion of the preceptorship period.

42.4(4) Chiropractic residents who participate in the postgraduate preceptorship program have graduated from a chiropractic college approved by the board.

42.4(5) All chiropractic physicians who serve as preceptors will be approved under rule 645—42.5(151).

42.4(6) The chiropractic college retains ultimate responsibility for student learning and evaluations during the preceptorship.

42.4(7) The chiropractic preceptor will supervise no more than one chiropractic intern or one chiropractic resident for the duration of a given preceptorship period.

42.4(8) If a preceptor agreement must be canceled for any reason, it is the responsibility of the chiropractic college to assign the intern or resident to another preceptor and notify the Iowa board of chiropractic of the preceptorship cancellation. The notice shall include reasons for cancellation of the preceptorship.

645—42.5(151) Approved chiropractic physician preceptors.

42.5(1) A chiropractic physician will be approved to be a chiropractic physician preceptor if the following criteria are met:

a. The chiropractic physician holds a current Iowa chiropractic license and has continuously held licensure in the United States for the previous five years prior to preceptorship;

b. The chiropractic physician is currently fully credentialed by the sponsoring chiropractic college and approved by the board; and

c. The chiropractic physician has not had any formal disciplinary action.

42.5(2) The role of the chiropractic physician preceptor will include:

a. Responsibility for supervising the practice of the chiropractic intern or chiropractic resident who is accepted into a preceptorship practice.

b. Identifying the chiropractic intern or chiropractic resident to the patients of the preceptorship practice to ensure that no patient will misconstrue the status of the intern or resident. The intern or resident will wear a badge identifying that person as an intern or resident at all times in the presence of preceptorship patients.

c. Exercising direct, on-premises supervision of the chiropractic intern or chiropractic resident at all times that the intern or resident is engaged in any facet of patient care in the chiropractic physician preceptor's clinic.

d. Directing the chiropractic intern or chiropractic resident only in treatment care that is within the educational background and experience of the preceptor.

e. Notifying the preceptorship program within 30 days of either of the following actions:

(1) If the preceptor has any formal disciplinary action taken by any licensing entity; or

(2) If the preceptor is a party to any malpractice settlement or judgment.

645—42.6(151) Termination of preceptorship. A preceptorship may terminate upon the occurrence of one of the following events:

42.6(1) Interns. The intern graduates from a board-approved college of chiropractic.

42.6(2) Residents. Twelve months have passed since the resident graduated from a board-approved college of chiropractic.

42.6(3) Formal disciplinary action is taken against the preceptor or the preceptor is a party to a final malpractice judgment or settlement agreement.

These rules are intended to implement Iowa Code chapter 151.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 43
“Practice of Chiropractic Physicians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 151, 147, 272C, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 151

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) + 1 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

These proposed rules articulate the medical scope of practice that a chiropractor can provide. They provide Iowans, licensees, and their employers with more information on the accepted minimum standards for the practice of this profession in Iowa.

Costs to the Department include the staff time needed to manage the full scope of the Board of Chiropractic (Board) activities, which includes oversight of practice standards, questions from licensees and the public, and administration of Board meetings. An executive officer supports the work of this Board at approximately 0.37 of an FTE position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The general public and licensees benefit from these proposed rules. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

Costs to the Department include the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, questions from licensees and the public, and administration of board meetings. An executive officer supports the work of this Board at approximately 0.37 of an FTE position. Staff salaries to support the work of the Board are covered by the Licensing

and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from these proposed rules. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board believes that the costs justify the benefits achieved in order to regulate the chiropractic profession in accordance with Iowa Code. Since 2021, 52 complaints have been filed. Absent these rules, lower-skilled individuals could provide chiropractic services in Iowa, and the Board anticipates there would be an increase in the number of complaints from the public.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean an individual who does not meet the educational and licensure requirements could engage in providing chiropractic services and potentially cause injury to a consumer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, questions from licensees and the public, and administration of Board meetings. An executive officer supports the work of this Board at approximately 0.37 of an FTE position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

There is no anticipated impact to state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are currently 1,959 licensed chiropractors. If this profession were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which could be a public safety concern due to the scope of practice of a chiropractor. Doctors of chiropractic are regulated in all 50 states plus the District of Columbia and many U.S. territories.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board determined there is no other less costly or less intrusive method to regulate the profession. Costs to sustain practice requirements are justified by the safety and welfare of the patients.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified any alternative methods to the licensure of chiropractors. Doctors of chiropractic are licensed and regulated in all 50 states plus the District of Columbia and many U.S. territories. These proposed rules provide consistency related to the licensure of chiropractors.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board believes that to ensure public safety and the integrity of the profession, licensure requirements should stay in effect. Currently, all 50 states regulate chiropractors. Not regulating this profession could jeopardize public safety and lead to serious injury for consumers. The Board believes regulations are necessary and critical to ensuring public safety, which is the paramount concern.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The rules are meant to ensure public safety in terms of practice standards for chiropractors. While some licensees could be running a small business, some also work for large hospitals and clinics. To exempt a small business from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 43 and adopt the following **new** chapter in lieu thereof:

CHAPTER 43 PRACTICE OF CHIROPRACTIC PHYSICIANS

645—43.1(151) Definitions. The following definitions will be applicable to the rules of the Iowa board of chiropractic.

“Active chiropractic physiotherapy” means therapeutic treatment performed by the patient, including but not limited to exercises and functional activities that promote strength, endurance, flexibility, and coordination.

“Acupuncture” means the same as defined in Iowa Code section 148E.1.

“Adjustment/manipulation of neuromusculoskeletal structures” means the use by a doctor of chiropractic of a skillful treatment based upon differential diagnosis of neuromusculoskeletal structures and procedures related thereto by the use of passive movements with the chiropractic physician's hands or instruments in a manipulation of a joint by thrust so the patient's volitional resistance cannot prevent the motion. The manipulation is directed toward the goal of restoring joints to their proper physiological relationship of motion and related function, or stimulation of joint receptors. Movement of the joint is by force beyond its active limit of motion, but within physiologic integrity. Adjustment or manipulation commences where mobilization ends and specifically begins when the elastic barrier of resistance is encountered by the doctor of chiropractic and ends at the limit of anatomical integrity. Adjustment or manipulation as described in this definition is directed to the goal of the restoration of joints to their

proper physiological relationship and associated functions of motion and related function, release of adhesions or stimulation of joint receptors. Adjustment or manipulation as described in this definition is by hand or instrument. The primary emphasis of this adjustment or manipulation is upon specific joint element adjustment or manipulation and treatment of the articulation and adjacent tissues of the neuromusculoskeletal structures of the body and nervous system, using one or more of the following:

1. Impulse adjusting or the use of sudden, high velocity, short amplitude thrust of a nature that patient volitional resistance is overcome, commencing where the motion encounters the elastic barrier of resistance and ending at the limit of anatomical integrity.

2. Instrument adjusting, utilizing instruments specifically designed to deliver sudden, high velocity, short amplitude thrust.

3. Light force adjusting, utilizing sustained joint traction or applied directional pressure, or both, which may be combined with passive motion to restore joint mobility.

4. Long distance lever adjusting, utilizing forces delivered at some distance from the dysfunctional site and aimed at transmission through connected structures to accomplish joint mobility.

“*Anatomic barrier*” means the limit of motion imposed by anatomic structure, the limit of passive motion.

“*CCCA*” means the Certified Chiropractic Clinical Assistant program offered by the FCLB.

“*Certified chiropractic assistant*” means a person who has completed a certified chiropractic assistant training program to perform selected chiropractic health care services under the supervision of a chiropractic physician.

“*Chiropractic insurance consultant*” means an Iowa-licensed chiropractic physician registered with the board who serves as a liaison and advisor to an insurance company.

“*Chiropractic manipulation*” means care of an articular dysfunction or neuromusculoskeletal disorder by manual or mechanical adjustment of any skeletal articulation and contiguous articulations.

“*Differential diagnosis*” means to examine the body systems and structures of a human subject to determine the source, nature, kind or extent of a disease, vertebral subluxation, neuromusculoskeletal disorder or other physical condition, and to make a determination of the source, nature, kind, or extent of a disease or other physical condition.

“*Elastic barrier*” means the range between the physiologic and anatomic barrier of motion in which passive ligamentous stretching occurs before tissue disruption.

“*Extremity manipulation*” means a corrective thrust or maneuver by a doctor of chiropractic by hand or instrument based upon differential diagnosis of neuromusculoskeletal structures applied to a joint of the appendicular skeleton.

“*FCLB*” means the Federal Chiropractic Licensing Board.

“*Malpractice*” means any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a chiropractic physician in the practice of the profession.

“*Mobilization*” means movement applied singularly or repetitively within or at the physiological range of joint motion, without imparting a thrust or impulse, with the goal of restoring joint mobility.

“*PACE*” means Providers of Approved Continuing Education and is the signature program of the FCLB.

“*Passive chiropractic physiotherapy*” means therapeutic treatment administered and received by the patient, including but not limited to mechanical, electrical, thermal, or manual methods.

“*Physiologic barrier*” means the limit of active motion, which can be altered to increase range of active motion by warm-up activity.

“*Practice of acupuncture*,” means the same as defined in Iowa Code section 148E.1.

“*Supervising chiropractic physician*” means the Iowa-licensed chiropractor responsible for supervision of services provided to a patient by a certified chiropractic assistant.

“*Supervision*” means the physical presence and direction of the supervising chiropractic physician at the location where services are rendered.

645—43.2(147,272C) Principles of chiropractic ethics. The following principles of chiropractic ethics are adopted by the board for the practice of chiropractic in this state.

43.2(1) These principles are intended to aid chiropractic physicians individually and collectively in maintaining a high level of ethical conduct. These are standards by which a chiropractic physician may determine the propriety of the chiropractic physician's conduct in the chiropractic physician's relationship with patients, with colleagues, with members of allied professions, and with the public.

43.2(2) The principal objective of the chiropractic profession is to render service to humanity with full respect for the dignity of the person. Chiropractic physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

43.2(3) Chiropractic physicians should strive continually to improve chiropractic knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

43.2(4) A chiropractic physician should practice a method of healing founded on a scientific basis, and should not voluntarily associate professionally with anyone who violates this principle.

43.2(5) The chiropractic profession should safeguard the public and itself against chiropractic physicians deficient in moral character or professional competence. Chiropractic physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

43.2(6) A chiropractic physician may choose whom to serve. In an emergency, however, services should be rendered to the best of the chiropractic physician's ability. Having undertaken the case of a patient, the chiropractic physician may not neglect the patient; and, unless the patient has been discharged, the chiropractic physician may discontinue services only after giving adequate notice.

43.2(7) A chiropractic physician should not dispose of services under terms or conditions which tend to interfere with or impair the free and complete exercise of professional judgment and skill or tend to cause a deterioration of the quality of chiropractic care.

43.2(8) A chiropractic physician should seek consultation upon request, in doubtful or difficult cases, or whenever it appears that the quality of chiropractic service may be enhanced thereby.

43.2(9) A chiropractic physician may not reveal the confidences entrusted in the course of chiropractic attendance, or the deficiencies observed in the character of patients, unless required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

43.2(10) The honored ideals of the chiropractic profession imply that the responsibilities of the chiropractic physician extend not only to the individual, but also to society where these responsibilities deserve interest and participation in activities which have the purpose of improving both the health and well-being of the individual and the community.

645—43.3 Reserved.

645—43.4(151) Chiropractic insurance consultant.

43.4(1) A chiropractic insurance consultant advises insurance companies, third-party administrators and other similar entities of Iowa standards of (a) recognized and accepted chiropractic services and procedures permitted by the Iowa Code and administrative rules and (b) the propriety of chiropractic diagnosis and care.

43.4(2) All licensees who review chiropractic records for the purposes of determining the adequacy or sufficiency of chiropractic treatments, or the clinical indication for those treatments, will indicate on their licensure renewals that they are engaged in those activities and the location where those activities are performed.

43.4(3) Licensed chiropractic physicians will not hold themselves out as chiropractic insurance consultants unless they meet the following requirements:

- a. Hold a current license in Iowa.
- b. Have practiced chiropractic in the state of Iowa during the immediately preceding five years.

c. Are actively involved in a chiropractic practice during the term of appointment as a chiropractic insurance consultant. Active practice includes but is not limited to maintaining an office location and providing clinical care to patients.

645—43.5(151) Acupuncture. A chiropractic physician who engages in the practice of acupuncture will maintain documentation that shows the chiropractic physician has successfully completed a course in acupuncture consisting of at least 100 hours of traditional, in-person classroom instruction with the instructor on site. The licensee will maintain a transcript or certification of completion showing the licensee's name, school or course sponsor's name, date of course completion or graduation, grade or other evidence of successful completion, and number of course hours. The licensee will provide the transcript or certification of completion to the board upon request.

645—43.6(151) Adjunctive procedures.

43.6(1) Adjunctive procedures are defined as procedures related to differential diagnosis.

43.6(2) For any applicant for licensure to practice chiropractic in the state of Iowa who chooses to be tested in limited adjunctive procedures, those limited procedures must be adequate for the applicant to come to a differential diagnosis in order to pass the examination.

43.6(3) Applicants for licenses to practice chiropractic who refuse to utilize any of the adjunctive procedures which they have been taught in approved colleges of chiropractic must adequately show the board that they can come to an adequate differential diagnosis without the use of adjunctive procedures.

645—43.7(151) Physical examination. The chiropractic physician is to perform physical examinations to determine human ailments, or the absence thereof, utilizing principles taught by chiropractic colleges. Physical examination procedures will not include prescription drugs or operative surgery.

645—43.8(151) Record keeping.

43.8(1) Chiropractic physicians will maintain clinical records in a manner consistent with the protection of the welfare of the patient. Records will be timely, dated, chronological, accurate, signed or initialed, legible, and easily understandable. Record-keeping rules apply to all patient records whether handwritten, typed or maintained electronically. Electronic signatures are acceptable when the record has been reviewed by the physician whose signature appears on the record.

43.8(2) Chiropractic physicians will maintain clinical records for each patient, which include all of the following:

a. *Personal data.*

- (1) Name;
- (2) Date of birth;
- (3) Address; and
- (4) Name of parent or guardian if a patient is a minor.

b. *Health history.* Records will include information from the patient or the patient's parent or guardian regarding the patient's health history.

c. *Patient's reason for visit.* When a patient presents with a chief complaint, clinical records will include the patient's stated health concerns.

d. *Clinical examination progress notes.* Records will include chronological dates and descriptions of the following:

- (1) Clinical examination findings, tests conducted, a summary of all pertinent diagnoses, and updated health assessments;
- (2) Plan of intended treatment, including description of treatment, frequency and duration;
- (3) Services rendered and any treatment complications;
- (4) All testing ordered or performed;
- (5) Diagnostic imaging report if imaging procedure is ordered or performed;
- (6) Sufficient data to support the recommended treatment plan.

e. Clinical record. Each page of the clinical record will include the patient's name, the date information was recorded and the doctor's name or facility's name.

43.8(3) Retention of records. A chiropractic physician will maintain a patient's record(s) for a minimum of six years after the date of last examination or treatment. Records for minors will be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards will be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.

43.8(4) Electronic record keeping. When electronic records, which include both electronically created records and scanned paper records, are utilized, a chiropractic physician will maintain either a duplicate hard-copy record or a backup electronic record.

43.8(5) Correction of written records. Notations will be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line. Entries recorded at a time other than the date of the patient encounter must include the date of the entry and the initials of the author.

43.8(6) Correction of electronic records. Any alterations made after the date of service will be visibly recorded. All alterations will include a notation setting forth the date of alteration and identification of the author. Entries recorded at a time other than the date of the patient encounter must include the date of the entry and the initials of the author.

43.8(7) Abbreviations will be standard and common to all health care disciplines. Nonstandard abbreviations will be referenced with a key that is included in the record when the record is requested.

43.8(8) Confidentiality and transfer of records. Chiropractic physicians will preserve the confidentiality of patient records. Upon signed request of the patient, the chiropractic physician will furnish such records or copies of the records as directed by the patient within 30 days. A notation indicating the items transferred, date of transfer and method of transfer will be maintained in the patient record. The chiropractic physician may charge a reasonable fee for duplication of records but may not refuse to transfer records for nonpayment of any fees. A written request may be required before the transfer of the record(s), including, for example, compliance with HIPAA regulations. In certain instances, a summary of the record may be more beneficial for the future treatment of the patient; however, if a third party requests copies of the original documentation, that request must be honored.

43.8(9) Retirement or discontinuance of practice. A licensee, upon retirement, discontinuation of the practice of chiropractic, leaving a practice, or moving from a community, will:

a. Notify all active patients, in writing one month prior to discontinuation of practice. The notification will include the following information:

(1) That the licensee intends to discontinue the practice of chiropractic in the community and that patients are encouraged to seek the services of another licensee; and

(2) How patients can obtain their records, including the name and contact information of the records custodian.

b. Make reasonable arrangements with active patients for the transfer of patient records, or copies of those records, to the succeeding licensee.

c. For the purposes of this subrule, "active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the one-year period prior to retirement, discontinuation of the practice of chiropractic, leaving a practice, or moving from a community.

43.8(10) Record-keeping procedures and standards will be utilized for all individuals who receive treatment from a chiropractic physician in all sites where care is provided.

43.8(11) A chiropractic physician who offers a prepayment plan for chiropractic services will:

a. Have a written prepayment policy statement that is maintained in the office and available to patients upon request. The policy statement, at a minimum, will include provisions that:

(1) Prepaid funds will not be expended until services are provided; and

(2) The patient will receive a prompt refund of any unused funds upon request. The refund will be calculated based on a defined method, which will be clearly set forth in the written prepayment policy statement.

- b.* Require the patient to sign and date a prepayment document that incorporates the conditions and descriptions of the written prepayment policy statement.
- c.* Maintain the signed and dated written prepayment policy statement in the patient's record.

645—43.9(151) Billing procedures.

43.9(1) Chiropractic physicians will maintain accurate billing records for each patient. Records may be stored on paper or electronically. The records will contain all of the following:

- a.* Name, date of birth and address.
- b.* Diagnosis indicated with description or ICD code.
- c.* Services provided with description or CPT code.
- d.* Dates of services provided.
- e.* Charges for each service provided.
- f.* Payments made for each service and indication of the party providing payment.
- g.* Dates payments are made.
- h.* Balance due for any outstanding charges.

43.9(2) Chiropractic physicians will preserve the confidentiality of billing records.

43.9(3) Upon signed request of the patient, the chiropractic physician will furnish billing records or copies of the records as directed by the patient within 30 days. The chiropractic physician may charge a reasonable fee for duplication of records, but may not refuse to transfer records for nonpayment of any outstanding balance.

43.9(4) Each chiropractic physician is responsible for the accuracy and validity of billings submitted under the chiropractic physician's name.

43.9(5) Chiropractic physicians:

- a.* Who are owners, operators, members, partners, shareholders, officers, directors, or managers of a chiropractic clinic will be responsible for the policies, procedures and billings generated by the clinic.
- b.* Who provide clinical services are required to familiarize themselves with the clinic's billing practices to ensure that the services rendered are accurately reflected in the billings generated. In the event an error occurs which results in an overbilling, the licensee must promptly make reimbursement of the overbilling whether or not the licensee is in any way compensated for such reimbursement by an employer, agent or any other individual or business entity responsible for such error.

43.9(6) A chiropractic physician has a right to review and correct all billings submitted under the chiropractic physician's name or identifying number(s). Signature stamps or electronically generated signatures will be utilized only with the authorization of the chiropractic physician whose name or signature is designated. Such authorization may be revoked at any time in writing by the chiropractic physician.

43.9(7) Chiropractic physicians will not knowingly:

- a.* Increase charges when a patient utilizes a third-party payment program.
- b.* Report incorrect dates or types of service on any billing documents.
- c.* Submit charges for services not rendered.
- d.* Submit charges for services rendered which are not documented in a patient's record.
- e.* Bill patients or make claims under a third-party payer contract for chiropractic services that have not been performed.
- f.* Bill patients or make claims under a third-party payer contract in a manner which misrepresents the nature of the chiropractic services that have been performed.

43.9(8) For cases not involving third-party payers, nothing in this rule will prevent a chiropractic physician from providing a fee reduction for reasonable time of service or substantiated hardship cases. The chiropractic physician will document time of service or hardship case fee reduction provisions in the patient record.

43.9(9) The chiropractic physician will not enter into an agreement to waive, abrogate, or rebate the deductible or copayment amounts of any third-party payer contract by forgiving any or all of any patient's obligation for payment thereunder, except in substantiated hardship cases, unless the third-party payer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in accordance with the

third-party payer contract. The chiropractic physician will document any hardship case fee reduction provisions in the patient record.

645—43.10(151) Certified chiropractic assistants.

43.10(1) *Supervisory responsibilities of the chiropractic physician.*

a. The supervising chiropractic physician will ensure at all times that the certified chiropractic assistant has the necessary training and skills as required by these rules to competently perform the delegated services.

b. The supervising chiropractic physician may delegate services to a certified chiropractic assistant that are within the scope of practice of the chiropractic physician in a manner consistent with these rules. Violation of these rules will be grounds for discipline under 645—Chapter 45.

c. A chiropractic physician will not delegate to the certified chiropractic assistant the following:

- (1) Services outside the chiropractic physician's scope of practice;
- (2) Initiation, alteration, or termination of chiropractic treatment programs;
- (3) Chiropractic manipulation and adjustments;
- (4) Diagnosis of a condition.

d. A supervising chiropractic physician will ensure that a certified chiropractic assistant is informed of the supervisor and certified chiropractic assistant relationship and is responsible for all services performed by the certified chiropractic assistant.

43.10(2) *Education requirements for certified chiropractic assistants.*

a. The supervising chiropractic physician will ensure that a certified chiropractic assistant has completed a professional certification program. A certified chiropractic assistant training program will include training and instruction on the use of chiropractic physiotherapy procedures related to services to be provided by the certified chiropractic assistant. Any certified chiropractic assistant training program will be provided by an approved CCE-accredited chiropractic college, FCLB, PACE, CCCA, or a chiropractic state association.

b. Certified chiropractic assistants performing active chiropractic physiotherapy procedures are required to complete 12 hours of instruction, of which 6 hours will be clinical experience under the supervision of the chiropractic physician.

c. Certified chiropractic assistants performing passive chiropractic physiotherapy procedures are required to complete 12 hours of instruction, of which 6 hours will be clinical experience under the supervision of the chiropractic physician.

d. If both paragraphs "b" and "c" apply, then 12 hours of instruction for active chiropractic physiotherapy procedures and 12 hours of instruction for passive chiropractic physiotherapy procedures will be required for a total of 24 hours of instruction.

e. The supervising chiropractic physician will provide a written attestation to the chiropractic college that the certified chiropractic assistant has completed the clinical experience. The college will issue a separate certificate of completion for the active or passive chiropractic training program as defined in paragraphs "b," "c," and "d" of this subrule.

f. The chiropractic physician will maintain in the chiropractic physician's primary place of business proof of the certified chiropractic assistant's completion of the training program. Copies of such documents will be provided to the board upon request.

These rules are intended to implement Iowa Code chapters 147, 151, 272C, and 514F.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 44
“Continuing Education for Chiropractic Physicians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 151, 147.36 and 147.76
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 151, 17A, 147 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

The intended benefit of continuing education is to maintain professional competency and safety in diagnosing and analyzing human ailments, techniques, and to stay current on billing guidelines administered by state and federal programs.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industry offers these courses so the Board of Chiropractic is not privy to exact costs but, based on research, estimates it to be around \$15 per continuing education unit (CEU) hour, or approximately \$600 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that chiropractors maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry including educational institutions, professional associations, and businesses, offers these courses so the Board is not privy to exact costs, but based on research, the Board estimates costs to be around \$600 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 40 hours of continuing education for these license types every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit, because it ensures the licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.37 full-time equivalent (FTE) position, which includes questions from the public and licensees, such as practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa continuing education requirements for chiropractors are comparable to those of surrounding states. The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board reduced its continuing education hours from 60 to 40 on July 11, 2018, through the adoption of **ARC 3774C** to make the Board's requirement comparable to contiguous states. Currently, Iowa requires 40 hours of continuing education every two years. South Dakota requires 40 hours per

biennium. Kansas requires 50 hours annually. Nebraska requires 36 hours per biennium. Missouri requires 48 hours per biennium. Minnesota requires 20 hours annually.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
The Board believes the current number of continuing education hours is equitable.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board believes the current number of continuing education hours is equitable and comparable to other states.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The Board reduced its continuing education hours from 60 to 40 on July 11, 2018, through the adoption of **ARC 3774C** to make the Board's requirements comparable to contiguous states. Chiropractors practice in a number of settings including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. The cost of continuing education could be greater for small business owners because they would be responsible for the entire cost, but the proposed reduction in continuing education hours ultimately reduces the burden to the licensee. Conversely, the entities that provide continuing education may face a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44 CONTINUING EDUCATION FOR CHIROPRACTIC PHYSICIANS

645—44.1(151) Definitions. For the purpose of these rules, the following definitions will apply:

“*Active license*” means a license that is current and has not expired.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the Iowa board of chiropractic.

“*Clinical case management*” means coursework pertaining to diagnosis, treatment, and appropriate referral or coordination of care.

“*Continuing education*” means planned, organized learning acts meeting the standards set forth in these rules, acquired during licensure, and 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 chiropractic practice, education, or theory development 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.

“Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest and certificate of completion.

“License” means license to practice chiropractic in Iowa.

“Licensee” means any person licensed to practice as a chiropractic physician in Iowa.

645—44.2(272C) Continuing education requirements.

44.2(1) The biennial continuing education compliance period extends for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of each even-numbered year two years later.

44.2(2) Requirements of new licensees. Continuing education is not required in the first renewal period with the exception of two hours in the content areas of 645—Chapters 41 through 45 and Iowa Code chapter 151. Continuing education hours acquired any time from the initial licensing until the second license renewal, with the exception of two hours in the content areas of 645—Chapters 41 through 45 and Iowa Code chapter 151, may be used after the first renewal period. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

44.2(3) Hours of continuing education credit will be obtained by attending and participating in a continuing education activity as stipulated in rule.

44.2(4) No hours of continuing education will be carried over into the next biennium except as stated in 44.2(2) and 44.3(2)“a”(3). A licensee whose license is reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

44.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—44.3(151,272C) Standards.

44.3(1) General criteria. A continuing education activity must meet the following criteria:

- a. Constitute an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertain to subject matters which integrally relate to the practice of the profession;
- c. Be conducted by individuals who have specialized education, training and experience concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- d. Fulfill stated program goals, objectives, or both; and
- e. Provide proof of attendance to licensees in attendance including:
 - (1) Date(s), location, course title, presenter(s);
 - (2) Number of program clock hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

44.3(2) Specific criteria.

a. Continuing education hours of credit will be obtained by completing:

- (1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. At least 20 of these hours will be earned by completing a program in which an instructor conducts the class by employing a traditional in-person, classroom-type presentation and the licensee is in attendance in the same room as that instructor. The remaining 16 hours of continuing education credit relating to clinical case management of chiropractic patients may be

obtained by independent study, including any online instruction, that complies with conditions specified in 44.3(1).

(2) A minimum of two hours per biennium in professional boundaries regarding ethical issues related to professional conduct that may include but are not limited to sexual harassment, sensitivity training and ethics.

(3) A minimum of 12 hours per biennium of continuing education in the field of acupuncture is required for licensees certified in acupuncture and may be used toward clinical case management if the chiropractic physician is actively engaged in the practice of acupuncture. Chiropractic physicians not engaged in the active practice of acupuncture may take continuing education hours in the field of acupuncture for continuing education credit.

(4) Classes on child abuse and dependent adult abuse that meet the criteria in 645—subrules 41.8(4) and 44.3(1).

(5) Two hours of continuing education credit is required in the first biennial renewal period and one hour every biennial renewal period after that in the content areas of the administrative rules related to chiropractic physicians in Iowa, found at 645—Chapters 41 through 45 and the statutory provisions specific to the practice of chiropractic in Iowa Code chapter 151.

b. Continuing education hours of credit may be obtained by:

(1) Teaching at a Council on Chiropractic Education (CCE)-approved program or board of chiropractic-approved institution. A maximum of 15 hours per biennium may be obtained for each course taught.

(2) Completing electronically transmitted programs/activities or independent study programs/activities that have a certificate of completion.

(3) Presenting a continuing education program once per biennium for the initial presentation of the program.

(4) Completing a program provided by a CCE-accredited chiropractic college in the United States, the Iowa Chiropractic Society, American Chiropractic Association or International Chiropractors Association.

(5) Completing continuing education courses/programs that are certified by the Providers of Approved Continuing Education (PACE) through the Federation of Chiropractic Licensing Boards (FCLB).

(6) Proctoring at the NBCE examination. Fifteen hours of continuing education hours per NBCE examination event may be claimed up to a maximum of 30 hours of continuing education credit per biennium. The proctoring hours may apply toward the clinical requirement.

c. Continuing education may not be obtained by completing or teaching classes in basic anatomy and physiology or undergraduate level coursework.

44.3(3) *Specific criteria for presenters.* All instructors/presenters of a continuing education activity must include, as part of the continuing education activity, verbal and written statements to the participants regarding any affiliations or employment relationships with any entity promoting, developing or marketing products, services, procedures or treatment methods.

These rules are intended to implement Iowa Code section 272C.2 and chapter 151.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 45
“Discipline for Chiropractic Physicians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 151, 147 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 151

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

The proposed rulemaking defines actions that are inconsistent with professional standards for licensees, which are established to protect the consumer and colleagues. Actions inconsistent with professional standards could result in disciplinary actions against a practitioner’s license.

The 19 boards in the legacy Health and Human Services Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the chiropractor licensees and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are associated with costs to the licensed professional. The rules in this chapter are related to standards of care and consumer protection.

Licenses may be required to pay a civil penalty fee to satisfy disciplinary action. The Board of Chiropractic may impose civil penalties that do not exceed \$1,000 per violation.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.37 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Chiropractic treatment is most often sought for musculoskeletal conditions and for a wider spectrum of holistic health issues by consumers. Evidence-based treatment is required and those providers who do not follow this approach or violate consumer protection are subject to discipline.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The cost of taking no action would increase the potential for injury to the public by allowing licensed providers to continue to provide treatment to patients without rehabilitating their standard of care through a form of discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

The rulemaking establishes minimum requirements and imposes grounds for discipline against a chiropractor who violates the standard of care predicated on the chiropractor's standard of care. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee takes action that is grounds for discipline. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer, licensure specialist and investigator support the full scope of this work at 0.37 FTE position. This includes answering questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues.

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$2,200 was paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The costs to review and address the standards of professional behavior are justified by the benefit of protecting Iowa consumers who receive an inadequate delivery of chiropractic services.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less costly or intrusive method to implement this chapter has not been identified by the Board. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

While there has been some standardization of consideration of criminal convictions, the Board has not identified a less restrictive alternative to public protection.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure Iowans receive services from competent chiropractors.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns which are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of practice standards for chiropractors. While some chiropractors likely are running a small business of their own, some also work for large organizations, such as hospital systems. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 45 and adopt the following **new** chapter in lieu thereof:

CHAPTER 45 DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

645—45.1(151,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—45.1(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

45.1(1) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. This includes representations utilizing the term “physical therapy” when informing the public of the services offered by the chiropractic physician unless a licensed physical therapist is performing such services. Nothing herein will be construed as prohibiting a chiropractic physician from making representations regarding physiotherapy that may be the same as, or similar to, physical therapy or physical medicine as long as treatment is appropriate as authorized in Iowa Code chapter 151. Proof of actual injury need not be established.

45.1(2) Use of untruthful or improbable statements in advertisements and marketing. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation, or representations that are likely to cause the average person to misunderstand. The term “advertisements” includes oral, written, electronic, and other types of communication disseminated by or at the direction of a licensee for the purpose of encouraging or soliciting the use of the licensee’s services.

45.1(3) Violate the provisions of direct health care agreements pursuant to Iowa Code section 135N.1.

45.1(4) Failure to maintain a patient’s record(s) for a minimum of six years after the date of last examination or treatment. Records for minors shall be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards shall be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.

These rules are intended to implement Iowa Code chapters 147, 151, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 60
“Licensure of Barbers, Cosmetologists, Electrologists, Estheticians, Nail Technologists, and Instructors
of Barbering and Cosmetology Arts and Sciences”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 157.14, 272C.3, 272C.4 and
272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 157, and
272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:50 to 2:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

This proposed rulemaking sets minimum standards of entry into the barbering and cosmetology arts and sciences professions. Iowa residents, licensees, and employers benefit from the rulemaking because it clarifies the processes by which licensees may apply for licensure as a barber and cosmetologist, nail technician, esthetician, electrologist, or instructor as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety through review of the integrity and competence of the practitioner. Requirements include the application process, educational qualifications, and examination requirements. The rulemaking also articulates the merger of the Board of Barbering with the Board of Cosmetology Arts and Sciences, providing guidance for legacy license holders.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to an applicant because complying with the minimum requirements to enter into the profession is at the expense of the licensee. The license fee for a two-year license to practice cosmetology arts and sciences or barbering is \$60 (license fees are specifically addressed in rules 645—5.2(147,158) and 645—5.5(147,157)). Licensees must also pay an examination fee of \$83. Licensees who are not working for someone who holds an establishment license must also pay a biennial establishment license fee of \$72.

These costs are comparable to surrounding states' licensing fees. Nebraska's two-year license fee is \$95; licensees pay an examination fee of \$85. Nebraska imposes a biennial establishment license fee of \$150 for barbers and \$220 for cosmetologists and estheticians. Minnesota has an annual license fee of \$85 for barbers; cosmetologists and estheticians pay a license fee of \$195 every two years. Licensees must also pay an examination fee of \$85. Minnesota imposes an annual establishment license fee of \$85 for barbers and a three-year establishment license fee of \$350 for cosmetologists and estheticians.

Licensees also have costs related to educational requirements. The cost of barber and cosmetology school ranges from \$17,775 to \$22,384, although this cost estimate is based on a 2,100-hour education program. In 2023, the Legislature enacted and the Governor signed 2023 Iowa Acts, House File 652, which reduced the minimum number of hours from 2,100 to 1,550.

The costs for education are similar to those in surrounding states. The cost of barber and cosmetology school in Minnesota ranges from \$18,988 to \$24,988 (1,550 hours of education). In Nebraska, the cost of education for barbers ranges from \$15,673 to \$21,042 (hours regulated by the Board of Barbers); for cosmetologists and estheticians, it ranges from \$19,300 to \$21,850 (1,800 hours of education).

Board of Barbering and Cosmetology Arts and Sciences staff review applications for initial and renewal licenses, answer inquiries on licensing, and field phone calls. Staff also perform compliance audits and investigate complaints. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. The rulemaking establishes a clear process for licensing of barbers and cosmetologists, nail technicians, estheticians, electrologists, and instructors and ensures only qualified individuals are permitted to enter the profession. The rules provide guidance to instructors and students and ensure that establishment and school owners who do not hold a license in any of the prescribed disciplines understand infection control and the laws and rules under which licensees must operate, including public posting requirements.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide training for barbers and cosmetologists, nail technicians, estheticians, and electrologists to obtain their license in the state of Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. The cost of education ranges from \$17,775 to \$22,384, although this cost estimate is based on a 2,100-hour education program. In 2023, the Legislature enacted and the Governor signed 2023 Iowa Acts, House File 652, which reduces the minimum hours from 2,100 to 1,550. The examination fee is \$83.

Licensing fees are \$60 every two years. Licensees may incur an additional biennial establishment license fee of \$72.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public by a licensee who is not qualified to perform work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities. This includes reviews at the time of initial application and during reinstatement. Compliance audits are performed randomly on renewed licenses. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensure by consent agreements and discipline imposed by the Board are monitored by office staff. Complaints are investigated with letters, phone calls, and in-person interviews. Where appropriate, referrals are made to the impaired practitioner program.

An executive officer supports the full scope of this work at 0.74 full-time equivalent (FTE) position. This includes answering inquiries from the public and licensees on items such as practice standards, continuing education, and Board meeting administration. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure minimum competency. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. The cost of inaction would increase the potential for injury to the public that would remain unchecked without review prior to initial licensure, periodic compliance audits, and complaint investigation. In addition, the rulemaking provides consistency related to the licensure of barbers and cosmetologists, electrologists, estheticians, nail technologists, and instructors in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits, and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the rulemaking attempts to provide consistency related to the licensure of barbers and cosmetologists, nail technicians, estheticians, electrologists, and instructors across the United States, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits, and complaint investigation. The Board believes all current

requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the rulemaking attempts to provide consistency related to the licensure of barbers and cosmetologists, nail technicians, estheticians, electrologists, and instructors across the United States, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits, and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the rulemaking attempts to provide consistency related to the licensure of barbers and cosmetologists, nail technicians, estheticians, electrologists, and instructors across the United States, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to public safety concerns, which are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for barbers and cosmetologists, electrologists, estheticians, nail technologists, and instructors. Many licensees in these professions run a small business or are employed by a small business. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 60 and adopt the following **new** chapter in lieu thereof:

COSMETOLOGISTS

| | |
|------------|--|
| CHAPTER 60 | LICENSURE OF BARBERS, COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS, NAIL TECHNOLOGISTS, AND INSTRUCTORS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES |
| CHAPTER 61 | LICENSURE OF ESTABLISHMENTS AND SCHOOLS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES |
| CHAPTER 62 | RESERVED |
| CHAPTER 63 | INFECTION CONTROL FOR ESTABLISHMENTS AND SCHOOLS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES |
| CHAPTER 64 | CONTINUING EDUCATION FOR BARBERING AND COSMETOLOGY ARTS AND SCIENCES |
| CHAPTER 65 | DISCIPLINE FOR BARBERING AND COSMETOLOGY ARTS AND SCIENCES LICENSEES, INSTRUCTORS, AND SCHOOLS |

CHAPTER 60

LICENSURE OF BARBERS, COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS, NAIL TECHNOLOGISTS, AND INSTRUCTORS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES

645—60.1(157) Definitions. In addition to the definitions included in Iowa Code sections 157.1 and 84D.2 and 29 Code of Federal Regulations (CFR) §29.5 as amended on December 19, 2016, the following definitions apply to terms used in this chapter:

“Active license” means a license that is current and has not expired.

“Core curriculum” means the basic core life sciences curriculum that is required for completion of any course of study of barbering and cosmetology arts and sciences except for manicuring.

“Examination” means any of the tests used to determine minimum competency prior to the issuance of a barbering and cosmetology arts and sciences license.

“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 include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“Legacy curriculum” means a course of study and curriculum offered by barbering schools or cosmetology arts and sciences schools that, as applicable, comply with the administrative rules issued by the Iowa board of barbering or by the Iowa board of cosmetology arts and sciences that were in effect on June 30, 2023.

“Licensee” means any person or entity licensed to perform practice disciplines governed by the board of barbering and cosmetology arts and sciences pursuant to Iowa Code chapter 157 and 645—Chapters 60 through 65.

“Licensure by endorsement” means the issuance of an Iowa license to practice barbering and cosmetology arts and sciences to an applicant who is or has been licensed in the District of Columbia or in another state, territory, province or foreign country and who has held an active license under the laws of such other jurisdiction for at least 12 months during the past 24 months.

“Mentor” means a licensee providing guidance in a mentoring program.

“Mentoring” means a program allowing students to experience barbering and cosmetology arts and sciences in a licensed salon under the guidance of a mentor.

“NIC” means the National-Interstate Council of State Boards of Cosmetology, Inc.

“Pedicuring” means the practice of cleaning, shaping or polishing the toenails.

“Practice discipline” means the practice of electrology, esthetics, nail technology, or barbering and cosmetology as recognized by the board of barbering and cosmetology arts and sciences.

“*Prescribed practice*” means an area of specialty certified by the board within the scope of barbering and cosmetology arts and sciences.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—60.9(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in rule 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.

“*Shaving*” means the manual cutting or removal of hair with a razor.

“*Testing service*” means a national testing service selected by the board.

645—60.2(157) Initial licensure.

60.2(1) Requirements for licensure. All persons providing services in one or more practice disciplines shall hold a license issued by the board. The applicant shall:

a. Submit a completed online application and pay the nonrefundable fee specified in 645—subrule 5.5(1).

b. Demonstrate professional competence in one of the following ways:

(1) A person who is licensed in another jurisdiction may complete the licensure by endorsement application. If the applicant is licensed in another jurisdiction as an electrologist, nail technician or esthetician, then a successful applicant will receive a license in such practice discipline. If the applicant is licensed in another jurisdiction as a barber or as a cosmetologist, and the applicant is requesting licensure in the practice discipline of barbering and cosmetology, then a successful applicant will receive a license as a barber and cosmetologist. All applicants must provide a verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:

1. Licensee’s name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the licensee.

(2) A person who is licensed in another jurisdiction who is unable to satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

(3) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

c. Provide proof of completion of education.

(1) If the applicant graduated from a school that is licensed by the board, the applicant is to direct the educational program to submit to the board a diploma or an official transcript indicating date of graduation and completion of required hours in each practice discipline for which the applicant is requesting licensure.

If an applicant graduates from a licensed school after completing a course of study constituting a legacy curriculum as prescribed in 645—subrule 61.14(6), such graduation will satisfy the education requirement for the applicable practice discipline for which the applicant is requesting licensure. For purposes of this subrule, a legacy curriculum in barbering or a legacy curriculum in cosmetology will be sufficient proof of education for an applicant requesting a license to practice barbering and cosmetology.

(2) If the applicant graduated from a school that is not licensed by the board, the applicant is to direct the school to provide an official transcript showing completion of a course of study that meets the requirements of rule 645—61.14(157).

(3) If the applicant has graduated from an apprenticeship program, the applicant must direct the Iowa office of apprenticeship registered apprenticeship program to submit a certificate of completion.

(4) If the applicant was educated outside the United States, the applicant is to attach an original evaluation of the applicant's education from any accredited evaluation service.

60.2(2) Requirements for an instructor's license. An applicant for an instructor's license shall:

a. Submit a completed application for licensure and the appropriate fee to the board;

b. Be licensed in the state of Iowa in the prescribed practice discipline to be taught or be licensed as a barber and cosmetologist who possesses the skill and knowledge required to instruct in that practice discipline;

c. Provide documentation of completion of 1,000 hours of instructor's training or two years' active practice in the field of barbering and cosmetology, esthetics, electrology, or nail technology within six years prior to application;

d. For an instructor of electrology license, submit proof of 60 hours of practical experience, excluding school hours, in the area of electrolysis prior to application;

e. Pass an instructor's national examination, which, effective January 1, 2008, shall be the NIC instructor examination unless the applicant is applying for an instructor's license by endorsement as outlined in paragraph 60.2(1) "b."

60.2(3) Conditions. The following conditions apply for all licenses:

a. Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

b. Licensees who were issued their initial licenses within six months prior to the license renewal beginning date are not required to renew their licenses until the renewal month two years later.

c. The board may issue a single license number and expiration date to licensees who hold licenses in multiple practice disciplines.

645—60.3(157) Examination requirements.

60.3(1) An applicant shall pass a national examination prescribed by the board for the particular practice discipline with a score of 75 percent or greater.

The applicant shall submit the test registration fee directly to the test service. NIC examinations are administered according to guidelines set forth by the NIC.

60.3(2) If applying for licensure by endorsement, an applicant who graduated from a barber or cosmetology school prior to January 1, 2000, shall have passed the state written and practical examination required by the state in which the applicant was originally licensed.

60.3(3) An applicant who graduated from a barber or cosmetology school after January 1, 2000, shall have passed a national theory examination for the discipline in which the applicant seeks licensure.

60.3(4) An applicant for the barbering and cosmetology license who graduated from a barber or cosmetology school after July 1, 2023, shall have passed a national theory examination. Shaving with a razor requires additional certification by the board.

645—60.4(157) Criteria for licensure in prescribed practice disciplines.

60.4(1) A barbering and cosmetology license is not a requirement for an electrology, esthetics, or nail technology license.

60.4(2) Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline.

60.4(3) Theory hours earned in each practice discipline of barbering and cosmetology arts and sciences may be used in applying for a barbering and cosmetology license.

60.4(4) A barber and cosmetologist licensed after July 1, 2005, is not eligible to be certified in chemical peels, microdermabrasion, laser or intense pulsed light (IPL) and shall not provide those services.

60.4(5) Licensees must hold a shaving certificate, or the license will be restricted from the practice of shaving. An individual who was licensed as an Iowa barber prior to July 1, 2023, is not required to hold a shaving certificate.

60.4(6) Pedicuring shall only be done by a licensee who possesses the skill and knowledge required to perform the service in a professionally competent manner in compliance with 645—Chapter 63.

60.4(7) Waxing shall only be done by a licensee who possesses the skill and knowledge required to perform the service in a professionally competent manner in compliance with 645—Chapter 63.

60.4(8) An initial license to practice manicuring shall not be issued by the board after December 31, 2007. A manicurist license issued on or before December 31, 2007, may be renewed subject to licensure requirements identified by statute and administrative rule unless the license becomes inactive. A manicurist license that becomes inactive cannot be reactivated or renewed.

60.4(9) Any person previously licensed as a barber prior to [the effective date of this rulemaking] pursuant to 645—Chapter 21 will, upon successful renewal of such license, receive a barbering and cosmetology license.

60.4(10) Any person previously licensed as a cosmetologist prior to [the effective date of this rulemaking] pursuant to this chapter will, upon successful renewal of such license, receive a barbering and cosmetology license.

645—60.5(157) Prescribed practice training requirements. As outlined below, the board may approve a licensee to provide the prescribed practice services of shaving, microdermabrasion, chemical exfoliation, laser services, and IPL hair removal treatments once a licensee has complied with training requirements and submitted a completed application, the required supporting evidence, and applicable fees as specified in these rules. The applicant shall receive a certification following board approval.

60.5(1) Shaving for hair removal.

a. Shaving shall only be performed by a barber and cosmetologist who is certified by the board to perform those services. A barber licensed before July 1, 2023, is exempt from this requirement.

b. Shaving shall only be used for hair removal on the scalp, face or neck.

c. In order to receive board certification and be eligible to perform shaving for hair removal services, the licensee must complete a shaving program or pass an exam as outlined below:

(1) Provide evidence of passing the NIC barber practical exam or a national barber practical exam, or

(2) Complete a 40-hour shaving program from an Iowa licensed school, or a program sponsored by an Iowa licensed school, that is conducted by a licensed instructor who has specialized education, training and experience by reason of which said licensed instructor should be considered qualified concerning the subject matter of the program, then:

1. Obtain from the program a certification of training that contains the following information:

- Date, location, and course title;
- Name and license number of the instructor;
- Number of contact hours;
- Evidence that the training program includes a safety training component that provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of skin care, blood-borne pathogens and infection control.

2. Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(14). The fee is nonrefundable.

60.5(2) Microdermabrasion.

a. Microdermabrasion shall only be performed by a licensed, certified esthetician or a cosmetologist who was licensed prior to July 1, 2005, and is certified by the board.

b. To be eligible to perform microdermabrasion services, the licensee shall:

(1) Complete 14 contact hours of education specific to the material or apparatus used for microdermabrasion. Before an additional material or apparatus is utilized in the licensee's practice, the licensee shall provide official certification of training on the material or apparatus.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, and course title;
2. Number of contact hours;
3. Specific identifying description of the microdermabrasion machine covered by the course; and

4. Evidence that the training program includes a safety training component that provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of potential hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(14). The fee is nonrefundable.

60.5(3) Chemical exfoliation.

a. Chemical exfoliation shall only be performed by a cosmetologist who was licensed prior to July 1, 2005, and is certified by the board to perform those services. Additional certification is not required for licensed estheticians.

b. Chemical exfoliation procedures are limited to the removal of surface epidermal cells of the skin by using only non-medical-strength cosmetic preparations consistent with labeled instructions and as specified by these rules. This procedure is not intended to elicit viable epidermal or dermal wounding, injury, or destruction.

c. To be eligible to perform chemical peels, a cosmetologist who was licensed prior to July 1, 2005, shall:

(1) Complete 21 hours of training specific to the process and products to be used for chemical peels. Before an additional process or product is utilized in the licensee's practice, the licensee shall provide official certification of training on the new process or product.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, and course title;
2. Number of contact hours; and
3. Specific identifying description of the chemical peel process and products covered by the course.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(15). The fee is nonrefundable.

60.5(4) Laser services.

a. A cosmetologist licensed after July 1, 2005, shall not use laser products.

b. An electrologist shall only provide hair removal services when using a laser.

c. Estheticians and cosmetologists shall use a laser for cosmetic purposes only.

d. Cosmetologists licensed prior to July 1, 2005, electrologists and estheticians must be certified to perform laser services.

e. When a laser service is provided to a minor by a licensed cosmetologist, esthetician or electrologist who has been certified by the board, the licensee shall work under the general supervision of a physician. The parent or guardian shall sign a consent form prior to services being provided. Written permission shall remain in the client's permanent record for a period of five years.

f. To be eligible to perform laser services, a cosmetologist who was licensed on or before July 1, 2005, an electrologist, or an esthetician shall:

(1) Complete 40 hours of training specific to each laser machine, model or device to be used for laser services. Before an additional machine, model or device is utilized in the licensee's practice, the licensee shall submit official certification of training on the new machine, model or device.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, and course title;
2. Number of contact hours;
3. Specific identifying description of the laser equipment; and
4. Evidence that the training program includes a safety training component that provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(14). The fee is nonrefundable.

60.5(5) IPL hair removal treatments.

a. A cosmetologist licensed after July 1, 2005, shall not use IPL devices.
b. An IPL device shall only be used for hair removal.
c. Cosmetologists licensed prior to July 1, 2005, electrologists and estheticians must be certified to perform IPL services.

d. When IPL hair removal services are provided to a minor by a licensed cosmetologist, esthetician or electrologist who has been certified by the board, the licensee shall work under the general supervision of a physician. The parent or guardian shall sign a consent form prior to services being provided. Written permission shall remain in the client's permanent record for a period of five years.

e. To be eligible to perform IPL hair removal services, a cosmetologist who was licensed on or before July 1, 2005, an electrologist, or an esthetician shall:

(1) Complete 40 hours of training specific to each IPL machine, model or device to be used for IPL hair removal services. Before an additional machine, model or device is utilized in the licensee's practice, the licensee shall submit official certification of training on the new machine, model or device.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, and course title;
2. Number of contact hours;
3. Specific identifying description of the IPL hair removal equipment; and
4. Evidence that the training program includes a safety training component which provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(14). The fee is nonrefundable.

60.5(6) Health history and incident reporting.

a. Prior to providing laser or IPL hair removal, microdermabrasion or chemical peel services, the cosmetologist, esthetician, and electrologist shall complete a client health history of conditions related to the application for services and include it with the client's records. The history shall include but is not limited to items listed in paragraph 60.5(6) "b."

b. A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, IPL device, chemical peel, or microdermabrasion shall submit a report to the board within 30 days of any incident in which provision of such services resulted in physical injury requiring medical attention. Failure to comply with this requirement shall result in disciplinary action by the board. The report shall include the following:

- (1) A description of procedures;
- (2) A description of the physical condition of the client;
- (3) A description of any adverse occurrence, including:
 1. Symptoms of any complications including, but not limited to, onset and type of symptoms;
 2. A description of the services provided that caused the adverse occurrence;
 3. A description of the procedure that was followed by the licensee;
- (4) A description of the client's condition on termination of any procedures undertaken;
- (5) If a client is referred to a physician, a statement providing the physician's name and office location, if known;
- (6) A copy of the consent form.

60.5(7) Failure to report. Failure to comply with paragraph 60.5(6) "b" when the adverse occurrence is related to the use of any procedure or device noted in the attestation may result in the licensee's loss of authorization to administer the procedure or device noted in the attestation or may result in other sanctions provided by law.

60.5(8) A licensee shall not provide any services that constitute the practice of medicine.

645—60.6(157) Licensure restrictions relating to practice.

60.6(1) A certified laser product or an intense pulsed light device shall only be used on surface epidermal layers of the skin except for hair removal.

60.6(2) A laser hair removal product or an intense pulsed light device shall not be used on a minor unless the minor is accompanied by a parent or guardian and then shall be used only under general supervision of a physician.

60.6(3) Persons licensed under Iowa Code chapter 157 shall not administer any practice of removing skin by means of a razor-edged instrument.

60.6(4) Persons licensed under this chapter who provide hair removal, manicuring and nail technology services shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered, except for the use of a cuticle nipper.

60.6(5) Board-certified licensees providing shaving, microdermabrasion, chemical peels, laser or IPL hair removal treatments in an establishment shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, chiropractic or acupuncture.

60.6(6) Barbers and cosmetologists licensed prior to July 1, 2005, and licensed estheticians shall only perform medical aesthetic services in a medical spa under the delegation and supervision of a medical director as set forth by the Iowa board of medicine in rule 653—13.8(148,272C). The Iowa board of barbering and cosmetology arts and sciences does not license medical aestheticians.

60.6(7) Persons licensed under this chapter who provide apprenticeship programs must hold an active license sufficient to provide on-the-job training, must operate in an actively licensed establishment, and must comply with relevant Iowa office of apprenticeship laws and regulations for the operation of an apprenticeship program.

60.6(8) Licensees may only perform those services for which they possess the skill and knowledge required to perform the service in a professionally competent manner as set forth in Iowa Code chapter 157 and the related administrative rules and regulations.

645—60.7(157) Consent form requirements. A licensed esthetician, barber and cosmetologist, or electrologist, prior to providing services relating to a certified laser product, intense pulsed light device, chemical peel, or microdermabrasion, shall obtain from a client a consent form that:

1. Specifies in general terms the nature and purpose of the procedure(s);
2. Lists known risks associated with the procedure(s) if reasonably determinable;
3. States an acknowledgment that disclosure of information has been made and that questions asked about the procedure(s) have been satisfactorily answered;
4. Includes a signature of either the client for whom the procedure is performed or, if that client for any reason lacks legal capacity to consent, includes the signature of a person who has legal authority to consent on behalf of that client in those circumstances.

645—60.8(157) License renewal.

60.8(1) The biennial license renewal period for a license to practice cosmetology arts and sciences shall begin on April 1 of one year and end on March 31 two years later. All licensees shall renew on a biennial basis.

a. The board may send a renewal notice by regular mail to each licensee at the address on record prior to the expiration of the license.

b. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

c. A new or reactivated license granted by the board to a licensee who holds a current license in another practice discipline in barbering and cosmetology arts and sciences may have the same license expiration date as the licensee's other license(s). If the licensee does not have another active license with the board, the license expiration date shall be in the current renewal period unless the license is issued within six months of the end of the renewal cycle and subrule 60.8(2) applies.

60.8(2) 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.

60.8(3) License renewal.

a. A licensee seeking renewal shall:

(1) Meet the continuing education requirements of rule 645—64.2(157). 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

(2) Submit the completed online renewal application and renewal fee and upload certificate(s) of completion for related continuing education before the license expiration date.

b. Licensees currently licensed in Iowa but practicing exclusively in another state or serving honorably as active duty military or the spouse of active duty military service personnel may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state where the licensee practices. Those licensees living and practicing exclusively in a state which has no continuing education requirement for renewal of a license shall not be required to meet Iowa's continuing education requirement but shall pay all renewal fees when due. (Iowa Code section 272C.2(4).)

60.8(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

60.8(5) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.5(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

60.8(6) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice barbering and cosmetology arts and sciences in Iowa until the license is reactivated. A licensee who practices barbering and cosmetology arts and sciences in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

60.8(7) 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.

645—60.9(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

60.9(1) Submit a reactivation application on a form provided by the board.

60.9(2) Pay the reactivation fee that is due as specified in rule 645—5.5(147,157).

60.9(3) Provide verification of current competence to practice barbering and cosmetology arts and sciences by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of six hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 12 hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation.

60.9(4) Licensees who are instructors of barbering and cosmetology arts and sciences shall obtain an additional six hours of continuing education in teaching methodology as prescribed in 645—Chapter 64.

645—60.10(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 rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—60.9(17A,147,272C) prior to practicing barbering and cosmetology arts and sciences in this state.

These rules are intended to implement Iowa Code chapters 157 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 61
“Licensure of Establishments and Schools of Barbering and Cosmetology Arts and Sciences”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 157.14, 272C.3, 272C.4 and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 157 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:50 to 2:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

This proposed rulemaking clarifies the processes by which an individual may apply for licensure of establishments and schools in order to provide barbering and cosmetology arts and sciences services, as directed in statute. The rulemaking outlines the process for licensure, including renewal and reinstatement, for fixed and readily moveable establishments. The rulemaking ensures public safety through identification of the limited services allowed outside of a licensed establishment and the requirement to inform the public when services are provided by non-licensees, such as blow-dry stylists, students and apprentices, where applicable.

For the schools, the rulemaking describes the application process, course of study requirements, and physical requirements for schools of barbering and cosmetology arts and sciences, including minimum equipment requirements, classroom use, and public notices, as well as record keeping for student attendance, accelerated learning policies, and mentoring contracts.

The rulemaking also provides guidance for legacy license holders and legacy schools following the merger of the Board of Barbering with the Board of Cosmetology Arts and Sciences.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to an applicant to comply with the minimum requirements to own a school or establishment. This includes a lease, hiring licensed staff and/or instructors (in the case of a school), compliance with Iowa laws and rules, and proper equipment for service delivery and observation of infection control standards. The fee for a biennial establishment license is \$72. The license fee for a school is \$600 for the first year with a \$270 renewal fee thereafter.

These costs are comparable to surrounding states. Minnesota's establishment fees range from \$85 (barber shop annual and renewal license fee) to \$350 (cosmetology salon license and application fee). School fees in Minnesota range from \$280 (barber school renewal fee) to \$4,000 (initial three-year cosmetology school application and license fee). In Nebraska, an initial two-year barber shop license fee is \$220; renewal is \$120. Salon two-year license fees are \$150 in Nebraska. Schools in Nebraska must pay license fees ranging from \$300 to \$900.

Board of Barbering and Cosmetology Arts and Sciences staff review applications for initial and renewal licenses, answer inquiries on licensing, and field phone calls. Staff also perform compliance audits and investigate complaints. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Licensing these establishments ensures the public that the owner and practitioners are aware of the infection control and universal precautions that must be observed. If an injury occurs, the Board can inspect and evaluate the practice. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The rulemaking ensures that Iowans are treated by competent and qualified practitioners with knowledge of topics including infection control, which is pertinent to the profession to ensure safety and welfare of the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The fee for a biennial establishment license is \$72. The license fee for a school is \$600 for the first year with a \$270 renewal fee annually thereafter.

- Qualitative description of impact:

Establishing minimum requirements for licensure of establishments and inspecting the schools annually ensures safety for students, practitioners and consumers by teaching standards and methods outlined in Iowa's laws and administrative rules that promote a safe experience for the public. The cost of inaction would be increasing the potential for injury to the public by a licensee who is not qualified to perform work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage board activities. This includes reviews at the time of initial application and during reinstatement. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensure by consent agreements and discipline imposed by the Board are monitored by office staff. Complaints are investigated with letters, phone calls, and in-person interviews.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure minimum competency. Licensure requirements could be reduced or eliminated, but the Board would be concerned about the public safety of Iowans in that scenario. The cost of inaction would be increasing the potential for injury to the public that would remain unchecked without review prior to initial licensure, renewal, and complaint investigation.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, annual school inspections, and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated, but the Board would be concerned about the public safety of Iowans in that scenario.

Due to the state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, annual school inspections, and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated, but the Board would be concerned about the public safety of Iowans in that scenario.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, annual school inspections, and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated, but the Board would be concerned about the public safety of Iowans in that scenario.

Due to the state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for establishments and schools of barbering and cosmetology arts and sciences. Most licensees run a small business that provides services to the public. Licensing the establishment communicates to the public that the business is aware of universal precautions, infection control standards, and record keeping requirements. Many small businesses benefit from the Board’s laws and rules, which assist the businesses in setting up their establishments and even in incorporating quarterly reviews with their employees. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 61 and adopt the following **new** chapter in lieu thereof:

CHAPTER 61

LICENSURE OF ESTABLISHMENTS AND SCHOOLS OF BARBERING AND COSMETOLOGY
ARTS AND SCIENCES

645—61.1(157) Definitions. In addition to the definitions included in Iowa Code sections 157.1 and 84D.2 and 29 Code of Federal Regulations (CFR) §29.5 as amended on December 19, 2016, the following definitions apply to terms used in this chapter:

“*Change in ownership*” means any of the following: a new owner of a sole proprietorship; the addition, removal, or replacement of any co-owner(s) in a partnership; or a change of controlling interest in any corporation.

“*Clinic area*” means the area of the school where the paying customers will receive services.

“*Dispensary*” means a separate area to be used for storing and dispensing of supplies and sanitizing of all implements.

“*Establishment license*” means a license issued to an Iowa establishment, as defined in Iowa Code section 157.1(10A), to provide barbering and cosmetology arts and sciences services.

“*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.

“*Legacy curriculum*” means a course of study and curriculum offered by barbering schools or cosmetology arts and sciences schools that, as applicable, comply with the administrative rules issued by the Iowa board of barbering or by the Iowa board of cosmetology arts and sciences that were in effect on June 30, 2023.

“*Mentor*” means a licensee providing guidance in a mentoring program.

“*Mentoring*” means a program allowing students in a school to experience barbering and cosmetology arts and sciences in a licensed establishment under the guidance of a mentor.

“On-the-job trainer” means the individual providing instruction and supervision of the apprenticeship program practical hours. This individual must be a licensee of the board in the discipline for which the individual is training, and the training must occur in a licensed establishment.

“School” means a school of barbering and cosmetology arts and sciences.

“School license” means a license issued to an establishment that is a fixed location for the instruction of students in barbering and cosmetology arts and sciences.

645—61.2(157) Establishment licensing. No person shall operate an establishment unless the owner has obtained a license issued by the board. A separate enclosed area inside an establishment that is operated as an independent business for the purpose of providing barbering and cosmetology services shall be considered its own establishment and shall not operate unless an establishment license is obtained. To determine what defines an independent contractor versus an employee, persons should contact the Iowa division of labor services.

61.2(1) The owner shall complete a board-approved application form accompanied by the appropriate fees payable by check or money order to the board of barbering and cosmetology arts and sciences. The fees are nonrefundable. The application shall be completed according to the instructions contained in the application and submitted 30 days prior to the anticipated opening day. If the application is not completed according to the instructions, the application will not be reviewed by the board.

61.2(2) Each establishment shall meet the requirements for sanitary conditions established in 645—Chapter 63 to be eligible for licensing. The establishment may be inspected for compliance with sanitation rules within 12 months following the issuance of the establishment license.

a. The establishment license may be for a fixed location or a location that is readily movable.

(1) Stationary establishment. A stationary establishment license shall be issued for a specific location. A change in location or site of a stationary establishment shall result in the cancellation of the existing license and necessitate application for a new license and payment of the fee required by 645—subrule 5.2(7). A change of address without a change of actual location shall not be construed as a new site.

(2) Readily movable establishment. A readily movable establishment license shall be issued for a permanent physical address. The licensee is required to provide a permanent physical address for board correspondence. A readily movable establishment may operate in a legal parking spot or on private property, with the permission of the owner or the owner’s designee, anywhere in the state of Iowa, provided the readily movable establishment is operating in compliance with applicable federal and state transportation, environmental, and sanitary regulations, including those in this chapter and in 645—Chapter 63.

b. Establishment owner’s contact information. The listed owner of either a stationary or readily movable establishment must update the board within 30 days of a change in contact information, which includes telephone number, email address, and mailing address.

61.2(3) Business may commence at the establishment following activation of the license.

61.2(4) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

61.2(5) An establishment license shall be issued for a specific location. A change in location or site of an establishment shall require submission of an application for a new license and payment of the fee required by 645—subrule 5.5(11). A change of address without change of actual location shall not be construed as a new site.

61.2(6) An establishment license is not transferable.

a. A change in ownership of an establishment shall require the issuance of a new license.

b. An establishment cannot be sold if disciplinary actions are pending.

c. If an establishment owner sells the establishment, that owner must send the license certificate and a report of the sale to the board within ten days of the date on which the sale is final. The owner

of the establishment on record shall retain responsibility for the establishment until the notice of sale is received in the board office.

d. The board may request legal proof of the ownership transfer.

e. If the name or the address of an establishment changes, the owner shall notify the board within 30 days of such change. Additionally, the owner shall return the current certificate and pay the reissued certificate fee as specified in rule 645—5.5(147,157).

645—61.3(157) Readily movable establishment. A mobile home, motor home, trailer, or other recreational vehicle may be used as a readily movable establishment if it complies with the following:

61.3(1) The owner shall possess a current readily movable establishment license issued by the board.

61.3(2) The owner shall complete a board-approved application.

61.3(3) The readily movable establishment's owner's telephone number, email address, and permanent address must be included on the application for licensure and must be updated and accurate.

61.3(4) No service may be performed on a client in a moving vehicle. Services shall be performed in a readily movable establishment that is parked in a legal parking spot.

61.3(5) Readily movable establishments must provide:

a. A supply of hot and cold water;

b. Adequate lighting;

c. A floor surface in the service area that is nonabsorbent and easily cleanable;

d. Work surfaces that are easily cleanable;

e. Cabinets secured with safety catches wherein all chemicals shall be stored when the vehicle is moving;

f. A first-aid kit that includes adhesive dressing, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

61.3(6) A readily movable establishment must comply with all rules in 645—Chapter 63, “Infection Control for Establishments and Schools of Barbering and Cosmetology Arts and Sciences,” except rules 645—63.6(157) through 645—63.8(157).

645—61.4(157) Establishment license renewal.

61.4(1) The biennial license renewal period for an establishment license shall begin on January 1 of every odd-numbered year and end on December 31 two years later.

61.4(2) A renewal of license notice shall be electronically mailed to the owner of the establishment prior to the expiration of the license. Failure to receive the renewal notice shall not relieve the owner of the obligation to pay the biennial renewal fee on or before the renewal date.

61.4(3) An establishment that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

61.4(4) The establishment owner shall submit the completed application with the renewal fee to the board office before the license expiration date.

61.4(5) An establishment shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the establishment shall be issued a license renewal.

61.4(6) If the renewal fee and renewal application are received in the office after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

645—61.5(272C) Inactive establishment license.

61.5(1) An establishment that has not renewed the establishment license within the required time frame will have an inactive license and shall not provide cosmetology services until the license is reactivated.

61.5(2) To reactivate an establishment license, the reactivation application and fee shall be submitted to the board office.

645—61.6(157) Display requirements for establishments.

61.6(1) Every establishment shall have a sign visible outside the entrance designating the place of business.

61.6(2) The most current establishment license proof of renewal shall be posted in the establishment front entrance area to provide the public a full, unobstructed view of the license.

61.6(3) The most current license proof of renewal for each licensee working in the establishment shall be posted in the establishment front entrance area to provide the public a full, unobstructed view of the license.

61.6(4) If the licensee works in more than one establishment, the current proof of renewal shall be posted in the primary place of practice, and the licensee shall be able to provide the renewal upon request.

61.6(5) Each licensee, blow-dry stylist and apprentice shall have a valid U.S. government-issued photo ID to provide to an agent of the board upon request as proof of identity.

645—61.7(147) Duplicate certificate for establishments.

61.7(1) A duplicate certificate shall be required if the current certificate is lost, stolen or destroyed. A duplicate certificate shall only be issued under such circumstances.

61.7(2) A duplicate establishment certificate shall be issued upon receipt of a completed application and receipt of the fee as specified in 645—subrule 5.5(5).

61.7(3) If the board receives a completed application stating that the owner of the establishment has not received the certificate within 60 days after the certificate is mailed by the board, no fee shall be required for issuing the duplicate certificate.

645—61.8(157) Licensure for schools of barbering and cosmetology arts and sciences.

61.8(1) An application for a school license shall be submitted 90 days prior to the anticipated opening day of the school. Prior to board review, the application shall include:

a. The exact location of the proposed school including a copy of the essential parts of the lease or other documents to provide proof that the owner of the school has occupancy rights for a minimum of one year; a complete plan of the physical facilities; and an explanation detailing how the facilities will be utilized relative to classrooms, clinic space, and a mentoring program;

b. A list of the names of licensed instructors including the school director(s) for the proposed school if the instructors and school director(s) have been hired by the school at the time of application;

c. Copies of the catalog, brochure, enrollment contract, student policies, and cancellation and refund policies that will be used by the school or distributed by the school to students and the public; and

d. The school's course of study and curriculum, which shall meet the course of study requirements outlined in rule 645—61.14(157).

61.8(2) Prior to issuance of the school license, the school shall:

a. Submit a final list of licensed instructors and director(s) hired for the school. The number of instructors must meet the requirement outlined in Iowa Code section 157.8, with the exception of instructors for the mentoring program; and

b. Meet the requirements of this chapter and 645—Chapter 63 and pass the board's inspection of the facility.

61.8(3) The school owner may be interviewed by the board during the review of the application.

61.8(4) After all criteria have been met, the school license shall be granted for the location identified in the school's application.

61.8(5) Instruction of students shall not begin until the school license is activated.

61.8(6) The school must provide proof of registration with the Iowa college student aid commission.

61.8(7) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records shall be maintained after two years only if the applicant submits a written request to the board.

61.8(8) Existing school license, new location. A change of location shall require submission of an application for a new school license and payment of the license fee 90 days in advance of the anticipated

date of opening. A change of address without a change of actual location shall not be construed as a new site.

61.8(9) Existing school license, new name. The owner shall notify the board in writing of a change of name within 30 days after the occurrence. In addition, the owner shall return the current certificate and pay the reissued certificate fee as specified in rule 645—5.5(147,157).

61.8(10) Existing school license, change of ownership. A school license is not transferable. A change in ownership of a school shall require the issuance of a new license. A school cannot be sold if disciplinary actions are pending.

a. The board may request legal proof of the ownership transfer.

b. If a school owner sells the school, that owner must send the license certificate and a report of the sale to the board within ten days of the date on which the sale is final. The owner of the school on record shall retain responsibility for the school until the new school owner has been issued an active school license.

c. The new school owner shall follow all requirements as outlined in rule 645—61.8(157).

61.8(11) Any school licensed as a barber school under rule 645—23.2(158) prior to [the effective date of this rulemaking] will, upon successful renewal, receive a license as a school of barbering and cosmetology arts and sciences. Any school licensed as a cosmetology arts and sciences school under this chapter prior to [the effective date of this rulemaking] will, upon successful renewal, receive a license as a school of barbering and cosmetology arts and sciences.

This rule is intended to implement Iowa Code sections 147.80, 157.6 and 157.8.

645—61.9(157) School license renewal.

61.9(1) The annual license renewal period for a school license shall begin on July 1 and end on June 30 one year later.

a. The online renewal application and renewal fee shall be submitted before the license expiration date.

b. Schools shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the school shall be issued a license renewal.

c. Schools shall successfully complete the annual inspection pursuant to Iowa Code sections 157.6 and 157.8.

61.9(2) A school that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal one year later.

61.9(3) If the renewal fee and renewal application are submitted after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

645—61.10(272C) Inactive school license.

61.10(1) If the renewal application and fee are not received in the office within 30 days after the license expiration date, the school license is inactive. To reactivate the school license, the reactivation application and fee shall be submitted to the board.

61.10(2) A school that has not renewed the school license within the required time frame will have an inactive license and shall not provide schooling or services until the license is reactivated.

645—61.11(157) Display requirements for schools.

61.11(1) Every school shall have a sign visible outside the entrance designating the place of business.

61.11(2) A school license and the current proof of renewal shall be posted in the school's front entrance area to provide the public a full unobstructed view of the license.

61.11(3) The current license proof of renewal for each instructor working at the school shall be posted in the school's front entrance area to provide the public a full unobstructed view of the license.

61.11(4) Advertisements for a school of barbering and cosmetology arts and sciences shall indicate that all services are performed by students under the supervision of instructors.

61.11(5) A sign shall be clearly displayed in the entrance of a school of barbering and cosmetology arts and sciences that indicates in prominent lettering that students perform all services under the supervision of instructors.

645—61.12(157) Physical requirements for schools of cosmetology arts and sciences. The school shall meet the following physical requirements:

61.12(1) The school premises shall have a minimum floor space of 3,000 square feet.

61.12(2) Each school shall provide a minimum of 100 square feet per student. When the enrollment in a school exceeds 30 students, additional floor space of 30 square feet shall be required for each additional student enrolled in the school.

61.12(3) Each licensed school offering a full barbering and cosmetology arts and sciences curriculum shall provide the following:

a. At least one clinic area where the paying public will receive services. The clinic area shall be confined to the premises occupied by the school.

b. A theory classroom(s) separate from the clinic area.

c. A library that is maintained for students and consists of textbooks, current trade publications and business management materials.

d. A separate area that shall be used as a dispensary. The dispensary shall be equipped with a lavatory, shelves or drawers for storing chemicals, cleansing agents and items, sterilization equipment and any other sanitation items required by 645—Chapter 63. Clean items and dirty items in the dispensary must be kept separated as required by 645—Chapter 63.

e. Two restrooms that are equipped with toilets, lavatories, soap and disposable paper towel dispensers.

f. A laundry room that is separated from the clinic area by a full wall or partition. Students may not lounge, eat, practice or study in the laundry room.

g. A separate room that is equipped for the practice of esthetics and electrology.

h. An administrative office.

61.12(4) Each licensed school offering a single discipline barbering and cosmetology arts and sciences curriculum shall provide the same physical space as outlined in subrule 61.12(3). Single discipline schools are exempt from paragraph 61.12(3) “g” if the board did not originally approve an electrology or esthetics course of study in the curriculum.

This rule is intended to implement Iowa Code sections 157.6 and 157.8.

645—61.13(157) Minimum equipment requirements. Each school of barbering and cosmetology arts and sciences shall have the following minimum equipment:

1. Workstations equipped with chair, workstation, closed drawer or container for sanitized articles, and mirror (maximum of two students per unit);

2. Treatment room(s) when electrology or esthetics or both are offered;

3. One set of hard-copy or electronic textbooks for each student and instructor;

4. Adequate number of shampoo bowls and chairs with headrests located in the clinic area and readily accessible for students and clients if the school offers a curriculum course in barbering and cosmetology;

5. Adequate equipment to perform all services in a safe and sanitary manner;

6. Audiovisual equipment available for each classroom;

7. Chair and table area for each student in the classroom;

8. One set of files maintained for all required records; and

9. Labeled bottles and containers showing intended use of the contents.

This rule is intended to implement Iowa Code sections 157.6 and 157.8.

645—61.14(157) Course of study requirements. A school of barbering and cosmetology arts and sciences shall not be approved by the board of barbering and cosmetology arts and sciences unless it complies with the course of study requirements as provided below.

61.14(1) Requirements for hours.

a. Barbering and cosmetology curriculum. Supervised practical instruction, theory and demonstrations totaling 1,550 hours must include core life sciences hours and all practices within this scope of Iowa Code section 157.1(5).

| | |
|---|--|
| Core life sciences | 150 hours |
| Barbering and cosmetology theory (including business and management related to the practice of cosmetology) | 440 hours |
| Total core life sciences and barbering and cosmetology theory: | 590 hours |
| Applied practical instruction | 960 hours |
| Total course of study | 1550 hours (51 semester credit hours) |

b. Electrology curriculum. Supervised practical instruction, theory and demonstrations totaling 425 hours must include core life sciences hours and all practices within the scope of Iowa Code section 157.1(10).

| | |
|-------------------------------|--------------------------------------|
| Core life sciences | 150 hours |
| Electrology theory | 50 hours |
| Applied practical instruction | 225 hours |
| Total course of study | 425 hours (14 semester credit hours) |

c. Esthetics curriculum. Supervised practical instruction, theory and demonstrations must include core life sciences hours and all practices within the scope of Iowa Code section 157.1(12).

| | |
|-------------------------------|--------------------------------------|
| Core life sciences | 150 hours |
| Esthetics theory | 115 hours |
| Applied practical instruction | 335 hours |
| Total course of study | 600 hours (20 semester credit hours) |

d. Nail technology curriculum. Supervised practical instruction, theory and demonstrations must include core life sciences hours and all practices within the scope of Iowa Code section 157.1(24).

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|-------------------------------|--------------------------------------|
| Core life sciences | 150 hours |
| Nail technology theory | 50 hours |
| Applied practical instruction | 125 hours |
| Total course of study | 325 hours (11 semester credit hours) |

Proof of curriculum requirements may be submitted to the board by either the clock hour or semester credit hour standard. Semester credit hours or the equivalent thereof shall be determined pursuant to administrative rules and regulations promulgated by the U.S. Department of Education.

61.14(2) Curriculum requirements.

a. Theory instruction shall be taught from a standard approved textbook but may be supplemented by other related textbooks. Online coursework is allowed for theory instruction.

b. Course subjects taught in the school curriculum, including skills and business management, shall relate to the specific practice discipline.

c. Required hours for theory and applied practical hours do not have to be obtained from one school.

d. Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline. Online coursework is allowed for core life sciences instruction.

e. Clock hours may be converted to credit hours using a standard, recognized method of conversion. Only hours from accredited or board-approved school programs will be accepted.

61.14(3) Core life sciences curriculum. The core life sciences curriculum shall contain the following instruction:

- a.* Human anatomy and physiology:
Cell, metabolism and body systems,
Human anatomy;
- b.* Bacteriology;
- c.* Infection control practices:
Universal precautions,
Sanitation,
Sterilization,
Disinfection;
- d.* Basic chemistry;
- e.* Matter;
- f.* Elements:
Compounds and mixtures;
- g.* Basic electricity;
- h.* Electrical measurements:
Reproduction of light rays,
Infrared rays,
Ultraviolet rays,
Visible rays/spectrum;
- i.* Safety;
- j.* Hygiene and grooming:
Personal and professional health;
- k.* Professional ethics;
- l.* Public relations; and
- m.* State and federal law, administrative rules and standards.

61.14(4) The school shall maintain a copy of the curriculum plan as directed by the school's accrediting agency or, if not subject to an accrediting agency, for a minimum of three years after the curriculum plan was taught by the school.

61.14(5) A school initially licensed after [the effective date of this rulemaking] must offer a curriculum and course of study for one or more practice disciplines as prescribed in subrules 61.14(1) through 61.14(3).

61.14(6) For a school licensed prior to [the effective date of this rulemaking], the following provisions apply:

- a.* Students enrolling in the school on or after August 1, 2024, must be taught a curriculum and course of study for one or more practice disciplines as prescribed by subrules 61.14(1) through 61.14(3).
- b.* Students enrolling in the school prior to August 1, 2024, may either be taught:
 - (1) A curriculum and course of study for one or more practice disciplines as prescribed by subrules 61.14(1) through 61.14(3); or
 - (2) A legacy curriculum in one or more practice disciplines. Any student graduating from a school after completing a legacy curriculum pursuant to this subrule will satisfy the education requirement for licensure as provided in 645—subparagraph 60.2(1)“c”(1).

645—61.15(157) Instructors. All instructors in a school of cosmetology arts and sciences shall be licensed by the department.

61.15(1) An instructor teaching a course in electrology, esthetics or nail technology shall also hold a license in that practice discipline or hold a barbering and cosmetology license that shows proof of having completed training in those practices equivalent to that of a license holder in that practice.

61.15(2) An instructor teaching a course in shaving, microdermabrasion, chemical peels, intense pulsed lights (IPLs) and lasers shall be certified by the state of Iowa to provide each of the services, as set forth in rule 645—60.4(157). An individual who was licensed as an Iowa barber prior to July 1, 2023, is not required to hold a shaving certificate.

61.15(3) A minimum of two instructors shall be employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students.

a. The number of instructors for each school of barbering and cosmetology arts and sciences shall be based upon total enrollment.

b. A student instructor shall not be used to meet licensed instructor-to-student ratios.

c. A school with less than 30 students enrolled may have one licensed instructor on site in the school if offering only clinic services or only theory instruction in a single classroom and less than 15 students are present.

d. If a school is offering clinic services and theory instruction simultaneously to less than 15 students, at least two licensed instructors must be on site.

e. Area community colleges operating a school prior to September 1, 1982, with only one instructor per 15 students are not subject to this subrule and may continue to operate with the ratio of one instructor to 15 students. A student instructor shall not be used to meet licensed instructor-to-student ratios.

61.15(4) An instructor shall:

a. Be responsible for and in direct charge of all physical and virtual core and theory classrooms and practical classrooms and clinics at all times;

b. Familiarize students with the different standard supplies and equipment used in establishments; and

c. Not perform barbering and cosmetology arts and sciences services, with or without compensation, on the school premises except for demonstration purposes.

This rule is intended to implement Iowa Code chapter 157.

645—61.16(157) Student instructors. A student instructor shall be a graduate of an approved school of barbering and cosmetology arts and sciences. Each student instructor shall be under the direct supervision of a licensed instructor at all times.

645—61.17(157) Students.

61.17(1) A school of barbering and cosmetology arts and sciences shall, prior to the time a student is obligated for payment, inform the student of all provisions set forth in Iowa Code section 714.25. The school shall retain a copy of the signed statement for two years following the student's graduating or leaving the program.

61.17(2) Students shall:

a. Wear clean and neat uniforms at all times during school hours and during the mentoring program;

b. Be supervised by a licensed instructor at all times except in a mentoring program when the students shall be under the guidance of a mentor;

c. Be provided regularly scheduled breaks and a minimum of 30 minutes for lunch;

d. Attend school no more than eight hours a day. Schools may offer additional hours to students who submit a written request for additional hours;

e. Receive no compensation from the school for services performed on clients;

f. Provide services to the public only after completion of a minimum of 10 percent of the course of study;

g. Not be called from theory class to provide services to the public;

h. Not be required to perform janitorial services or be allowed to volunteer for such services. Sanitation of the bathroom area shall be limited to replacing products and disinfecting the vanity and mirror surfaces. Sanitation of the toilet and bathroom floor areas is not to be performed by the student and is excluded from student sanitation duty; and

i. Receive no credit or hours for decorating for marketing or merchandising events or for participating in demonstrations of cosmetology arts and sciences when the sole purpose of the event is to recruit students and the event is outside the curriculum course.

645—61.18(157) Attendance requirements.

61.18(1) A school of barbering and cosmetology arts and sciences shall have a written, published attendance policy.

61.18(2) Schools shall ensure:

- a.* Students complete the hours required for each course of study set forth in rule 645—61.14(157).
- b.* Student attendance policies are applied uniformly and fairly for all physical and virtual classes.
- c.* Appropriate credit is given for all hours earned.
- d.* All retake tests and projects to be redone are completed without benefit of additional hours earned. Time scheduled for such work will be scheduled at the school's discretion.
- e.* Hours or credit is not added to the cumulative student record as an award or deducted from the cumulative student record as a penalty.
- f.* Work that must be done for missed hours must be allowed. The student must be given full credit for hours earned.

61.18(3) Pursuant to the federal Department of Education and accrediting standards agency, the school may adopt an absence policy not to exceed 10 percent of required coursework for doctor's excuses and life events. In no way shall this policy create a penalty for the student nor excuse the student from the remaining 10 percent of required coursework.

This rule is intended to implement Iowa Code chapter 157.

645—61.19(157) Accelerated learning.

61.19(1) A school may adopt an accelerated learning policy that includes the acceptance of life experience, prior knowledge learned and test-out procedures.

61.19(2) If the school has an accelerated learning policy, the policy shall be a written, published policy that clearly outlines the criteria for acceptance and hours or credit granted or for test-out procedures. The hours or credit granted for accelerated learning shall not exceed 20 percent of the student's entire course of study and shall be documented in the participating student's file.

- a.* After completion of all entrance requirements, a student may elect to sit for one or more academic written tests to evaluate the knowledge about subject matter gained from life experience or prior learning experience.
- b.* A student in a barbering and cosmetology arts and sciences course of study may be allowed to test out of a subject by sitting for final examinations covering the basic knowledge gained by a student who attends class sessions, or the school may accept and grant hours for prior or concurrent education and life experience.
- c.* A student who wishes to receive test-out credit or be granted hours for prior or concurrent education or life experience shall have maintained the academic grades and attendance policy standards set by the school.
- d.* The school may limit the number of times a student is allowed to sit for a test-out examination of a subject.

645—61.20(157) Mentoring program. Each cosmetology school must have a contract between the student, the school and the establishment mentor that includes scheduling, liability insurance and purpose of the mentoring program.

61.20(1) Students shall not begin the mentoring program until they have completed a minimum of 50 percent of the total contact or credit hours and other requirements of the mentoring program established by the school.

61.20(2) Students may participate in a mentoring program for no more than 5 percent of the total contact or credit hours.

61.20(3) Students shall be under supervision of the mentor at all times. Students may perform the following: drape, shampoo, remove color and perm chemicals, remove perm rods, remove rollers, apply temporary rinses, apply reconditioners and rebuilders with the recommendation of the mentor, remove nail polish, file nails, perform hand and arm massage, remove cosmetic preparations, act as receptionist, handle retail sales, sanitize establishment, consult with client (chairside manners), perform inventory, order supplies, prepare payroll and pay monthly bills, and hand equipment to the mentor.

61.20(4) The establishment mentor's responsibilities include the following: introduce the student to the establishment and the client, record the time of the student's attendance in establishment, prepare evaluation, discuss performance, and allow the student to shadow.

61.20(5) An establishment or school shall not compensate students when the students are participating in the mentoring program.

645—61.21(157) Graduate of a school of barbering and cosmetology arts and sciences.

61.21(1) A student shall be considered a graduate when the student has completed the required course of study and met the minimum attendance standard.

61.21(2) Students shall be given a final examination upon completion of the course of study but before graduation.

61.21(3) After passage of the final examination and completion of the entire course of study including all project sheets, students shall be issued a certificate of completion of hours required for the course of study.

645—61.22(157) Records requirements.

61.22(1) Each school of cosmetology arts and sciences shall maintain a complete set of student records. Individual student hours shall be kept on file at the school for two years following graduation.

61.22(2) Each school shall maintain daily teaching logs for all instructors, which shall be kept on file at the school for two years.

61.22(3) Prior to closure, the controlling school shall establish agreements with another school to maintain student and graduate transcripts and records. Prior to closure, the controlling school shall also notify the board in writing of the location of student records as established by the maintenance agreements and shall submit a copy of the maintenance agreements to the board. Provisions in the agreement must include maintenance of student transcript records for a period of no less than two years.

645—61.23(157) Classrooms used for other educational purposes. The licensed school of barbering and cosmetology arts and sciences may be used during scheduled theory or applied practical time for any use other than for student instruction so long as these activities do not disrupt classes. Activities that disrupt classes include but are not limited to:

61.23(1) Persons attending other educational classes passing through a classroom or clinic area (en masse) while it is in use.

61.23(2) Activities with noise levels that are disruptive to other classes.

61.23(3) Activities that usurp the space available for barbering and cosmetology arts and sciences instruction.

645—61.24(157) Public notice.

61.24(1) A sign shall be clearly displayed in the entrance of a licensed establishment operating an apprenticeship program that indicates in prominent lettering that apprentices are employed at the establishment and may perform services under the supervision of a licensed apprenticeship supervisor.

61.24(2) If any blow-dry stylist(s) engage in the practice of blow-dry styling at a licensed establishment, a sign shall be clearly displayed in the entrance of such establishment that indicates in prominent lettering that blow-dry stylist(s) perform limited services, as defined in Iowa Code section 157.12C, in the licensed establishment.

These rules are intended to implement Iowa Code chapters 157 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 63
“Infection Control for Establishments and Schools of Barbering and Cosmetology Arts and Sciences”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.76, 157.14, 272C.3, 272C.4 and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 157 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:50 to 2:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Iowa residents, the public, licensees, and employers benefit from the proposed rulemaking because it clarifies the infection control processes by which service providers may ensure the protection of public health as directed in statute.

The rulemaking publicly establishes the responsibilities of the establishment and school owners and service providers and the processes for keeping clean and used items separated, cleaning and disinfecting implements, storing and dispensing supplies, and disposal of porous instruments. The rulemaking also outlines infection control methods for the use of creams, cosmetics, and applicators and the practices consistently used to prevent exposure to blood-borne pathogens and the transmission of disease.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licenses may incur costs related to infection control responsibilities of the licensee. The Board of Barbering and Cosmetology Arts and Sciences recognizes that there are costs associated with infection control protocols and standards, but is unable to assess an actual cost.

Minnesota infection control requirements mirror Iowa's, including hand washing, use of a biohazard sharps container for needles and other sharp instruments, open sores protocol, and equipment sterilization. Nebraska's infection control requirements are also similar to Iowa's, but Nebraska has more stringent requirements related to safety data recording for services and all disinfectant products.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of infection control regulations is to ensure public safety and maintain a high level of care for Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board does not have data on the actual costs of implementing the infection control regulations for each licensee or establishment. The Board has not identified a more cost-effective alternative to the current complaint investigation and school inspection process.

Infection control requirements could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting public health and safety of Iowans.

- Qualitative description of impact:

Establishing minimum infection control requirements ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public that would remain unchecked without a basic understanding of infection control as outlined in these rules, as well as complaint investigation.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage board activities, which include investigation of complaints with letters, phone calls, and in-person interviews.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing infection control regulations are paid to private entities that provide the necessary cleaning, biohazard disposal equipment, and sterilization equipment for the licensees. This rulemaking has no anticipated impact on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There would be a loss of revenue for the private industries that provide the equipment and supplies necessary to implement safe infection control practices.

Infection control requirements could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting public health and safety of Iowans.

Due to the state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). 2023 Iowa Acts, House File 652, merged the Boards of Cosmetology Arts and Sciences and Barbering to create one board, which also increases efficiencies and reduces

duplication. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current complaint investigation and school inspection process. Infection control requirements could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting public health and safety of Iowans.

A review of surrounding states has shown that Iowa's infection control policies are in line with those of other states. Minnesota infection control requirements mirror Iowa's, including hand washing, use of a biohazard sharps container for needles and other sharp instruments, open sores protocol, and equipment sterilization. Nebraska's infection control requirements are also similar to Iowa's, but Nebraska has more stringent requirements related to safety data recording for services and all disinfectant products.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring whether the Board would recommend a change in the requirements for infection control. The Board has not identified a more cost-effective alternative to the current requirements that would ensure the same level of safety of Iowans.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board believes that eliminating the infection control requirements would increase the number of injuries to the public for unsafe practices, contamination, and spread of diseases.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The rulemaking is meant to ensure public safety in terms of disease, cleanliness of facilities, and sterilization of equipment. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 63 and adopt the following **new** chapter in lieu thereof:

CHAPTER 63
INFECTON CONTROL FOR ESTABLISHMENTS AND SCHOOLS OF BARBERING AND
COSMETOLOGY ARTS AND SCIENCES

645—63.1(157) Definitions. For purposes of these rules, the following definitions shall apply:

“*Cleaning*” refers to removing visible debris and disposable parts, washing the surface or item with water and soap or detergent, rinsing the surface or item thoroughly and drying the surface or item. Cleaning must occur before disinfection can begin.

“*Disinfectant*” means an EPA-registered bactericidal, virucidal, fungicidal, pseudomonacidal chemical solution, spray or wipe that is effective against HIV-1 and human hepatitis B virus and is intended to destroy or irreversibly inactivate specific viruses, bacteria, or pathogenic fungi, but not necessarily their spores, on nonporous items and surfaces.

“*Disinfection*” means the procedure that kills pathogenic microorganisms, but not necessarily their spores.

“*Dispensary*” means a separate physical location or area in an establishment or school to be used for the storing and dispensing of supplies and cleaning and disinfecting of all implements. The dispensary is where products, chemicals and disinfectants are prepared, measured, mixed, portioned, and disposed of.

“*FDA*” means the federal Food and Drug Administration.

“*Germicide*” means an agent that destroys germs.

“*Nonporous*” means an item that lacks minute openings or crevices that keep air, water and bacteria from entering the item.

“*Porous*” means an item that contains minute openings or crevices that allow air, water and bacteria to enter the item, such as untreated wood, paper and cardboard.

“*School*” means a school of cosmetology arts and sciences.

“*Service provider*” means any person regulated by Iowa Code chapter 157, including but not limited to establishment owners, licensees, students, blow-dry stylists and apprentices.

“*Sterilization*” means the procedure that kills all microorganisms, including their spores.

“*Universal precautions*” means practices consistently used to prevent exposure to blood-borne pathogens and the transmission of disease.

“*Wash hands*” means the process of thoroughly washing hands and the exposed portions of the arms up to the elbow with soap or detergent and water and drying with a single-use towel or air dryer. Bar soap shall not be set out for common use.

645—63.2(157) Infection control rules and inspection report. Upon request, the licensee shall make Chapter 63, “Infection Control for Establishments and Schools of Barbering and Cosmetology Arts and Sciences,” and the most recent inspection report available to the board, agents of the board, all persons employed or studying in an establishment or school, and the general public.

645—63.3(157) Responsibilities of establishment owners. Each establishment owner shall ensure the following:

1. The establishment owner holds a current and active establishment license issued by the board that reflects the current name, address and owner information;
2. Individuals employed for barbering and cosmetology arts and sciences services or other licensees working in the establishment hold a current and active license issued by the board of barbering and cosmetology arts and sciences;
3. Licensees employed by the establishment or other licensees working in the establishment do not exceed their scope of practice; and
4. License renewal cards are properly displayed in the front entrance area at eye level. No license which has expired or become invalid for any reason shall be displayed in connection with the practices of the establishment.

645—63.4(157) Responsibilities of licensees. Licensees are responsible for:

1. Their own station areas;
2. Holding a current and active license issued by the board of barbering and cosmetology arts and sciences; and
3. Ensuring that they do not exceed their scope of practice.

645—63.5(157) Joint responsibility. Establishment owners and licensees are jointly responsible for all service and common areas.

645—63.6(157) Building standards. Establishments and schools shall have and maintain:

1. A service area that is equipped with exhaust fans or air filtration equipment that is of sufficient capacity to be capable of removing chemical fumes from the air;
2. A dispensary;
3. A reception area;
4. Hot and cold running water and clean lavatory facilities;
5. Safe drinking water;
6. Hand-washing facilities;
7. Adequate lighting;
8. Work surfaces that are easily cleanable; and
9. A complete first-aid kit in a readily accessible location on the premises. At a minimum, the first-aid kit must include adhesive dressings, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

645—63.7(157) Establishments in residential buildings.

63.7(1) An establishment located in a residential building shall comply with all requirements in rule 645—63.5(157).

63.7(2) A separate entrance shall be maintained for establishment rooms in a residential building. An exception is that an entrance may allow passage through a nonliving area of the residence, i.e., hall, garage or stairway. Any door leading directly from the licensed establishment to any portion of the living area of the residence shall be closed at all times during business hours.

645—63.8(157) Establishments adjacent to other businesses. An establishment operated adjacent to any other business shall be separated by at least a partial partition. When the establishment is operated immediately adjacent to a business where food is handled, the business shall be entirely separated, and any doors between the establishment and the business shall be rendered unusable except in an emergency.

645—63.9(157) Smoking. All establishments licensed by the board shall comply with the smokefree air Act found in Iowa Code chapter 142D.

645—63.10(157) Personal cleanliness. Any service provider engaged in serving the public shall be neat and clean in person and attire.

645—63.11(157) Universal precautions. Any service provider shall practice universal precautions consistently by observing the following:

63.11(1) Thoroughly wash hands after smoking, vaping, eating, using the restroom, etc., and before providing services to each client. Hand sanitizers or gloves are not an acceptable substitute for hand washing.

63.11(2) Maintain biohazard sharps container for disposing of used needles, razor blades and other sharp instruments in establishments. These containers shall be located as close to the use area as is practical. These containers shall not be filled above designated “fill line” and shall be disposed of in accordance with guidelines issued by the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

63.11(3) Wear disposable gloves or may refuse to provide the service when encountering clients with open sores. Gloves shall only be used on a single client and shall be disposed of after the client's service. Anytime gloves are used during a service, wash hands both before gloves are worn and after they are removed.

63.11(4) Refrain from all direct client care and from handling client-care equipment if the service provider has open sores that cannot be effectively covered.

63.11(5) Clean and disinfect instruments and implements pursuant to rule 645—63.13(157).

63.11(6) Place instruments and supplies that have been used on a client or soiled in any manner in the proper receptacles clearly labeled "used." All used items shall be kept separate from items that are disinfected and ready for use.

63.11(7) Store disinfectant solution in the dispensary.

645—63.12(157) Blood exposure procedures.

63.12(1) If a service provider injures oneself, the following steps shall be taken before returning to service:

- a. Stop service.
- b. Clean the injured area by washing the area with soap and water. Use antiseptic or ointment as appropriate.
- c. In the case of mucous membrane exposure, wash or rinse the affected area with sufficient water.
- d. Cover the injury with the appropriate dressing.
- e. Clean the client and station as necessary. First, remove all visible debris and then clean the client with an antiseptic that is appropriate for the skin and clean the station with disinfectant.
- f. Bag any blood-soiled porous articles and dispose of articles in the trash.
- g. Wash and disinfect all nonporous items.
- h. Wash hands before returning to service.

63.12(2) If a client injury occurs, the service provider shall take the following steps:

- a. Stop service.
- b. Glove hands.
- c. Clean injured area and use antiseptic or ointment as appropriate.
- d. Cover the injury with the appropriate dressing to prevent further blood exposure.
- e. Clean station by removing all visible debris and using disinfectant that is appropriate for the soiled surface.
- f. Bag any blood-soiled porous articles and dispose of articles in the trash.
- g. Wash and disinfect all nonporous items.
- h. Wash hands before returning to service.

645—63.13(157) Disinfecting and sterilizing instruments and equipment. All nonporous tools and implements must be either disinfected or sterilized according to the requirements of this rule before use upon a client in schools and establishments.

63.13(1) Disinfection.

a. Nonporous tools and implements.

(1) Immersion method. After each use, all immersible nonporous tools and implements shall be disinfected by cleaning the tools and implements followed by complete immersion in a disinfectant. Disinfectant solutions shall be mixed according to manufacturer label instructions. The manufacturer's listed contact time for effectively eliminating all pathogens shall be adhered to at all times.

(2) Nonimmersion method. After each use, any nonporous item that cannot be immersed in a disinfectant shall be cleaned with soap or detergent and water to remove all organic material and then sprayed or wiped with disinfectant. Minimum disinfectant contact time as listed on the manufacturer's label shall be followed. Nonimmersible tools and implements include but are not limited to scissors, trimmers, clippers, handles of hair dryers and curling/flat irons.

b. Disinfected implements shall be stored in a disinfected, dry, covered container and shall be isolated from contaminants. Such container shall be disinfected at least once each week and whenever visibly dirty.

c. Disinfectant solutions shall be changed as instructed on the solution's manufacturer label or whenever visibly dirty.

d. Electric file bits.

(1) After each use, all visible debris shall be removed from diamond, carbide, natural and metal bits by cleaning with either an ultrasonic cleaner or immersion of each bit in acetone for 5 to 10 minutes.

(2) After they are cleaned, diamond, carbide, natural and metal bits shall be disinfected by complete immersion in an appropriate disinfectant. Minimum disinfectant contact time as listed on the manufacturer's label shall be followed.

63.13(2) Sterilization. UV light boxes are prohibited and are not an acceptable method of sterilization.

a. Tools and implements may be sterilized by one of the following methods:

(1) Steam sterilizer, registered and listed with the FDA and used according to the manufacturer's instructions. If steam sterilization, moist heat, is utilized, heat exposure shall be at a minimum of 121°C/250°F, for at least 30 minutes;

(2) Dry heat sterilizer, registered and listed with the FDA and used according to the manufacturer's instructions. If dry heat sterilization is utilized, heat exposure shall be at a minimum of 171°C/340°F, for at least 60 minutes;

(3) Autoclave sterilization equipment, calibrated to ensure that it reaches the temperature required by the manufacturer's instructions. If autoclave sterilization equipment is utilized, spore testing by a contracted independent laboratory shall be performed at least every 30 days. If a positive spore test is received, the autoclave may not be used until a negative spore test is received. The establishment must maintain a log of each autoclave use, all testing samples and results, and a maintenance log of all maintenance performed on the device. Maintenance shall be performed according to the manufacturer's instructions. The establishment must have available for inspection the autoclave maintenance log for the most recent 12 months; or

(4) Chemical sterilization with a hospital grade liquid which, if used, shall be used according to the directions on the label. When chemical sterilization is used, items shall be fully submerged for at least 10 minutes.

b. Sterilization equipment shall be maintained in working order. The equipment shall be checked at least monthly and calibrated to ensure that it reaches the temperature required by the manufacturer's instructions.

This rule is intended to implement Iowa Code section 157.6.

645—63.14(157) Porous instruments and supplies that cannot be disinfected. Porous instruments and supplies that come into direct contact with a client cannot be disinfected. These instruments and supplies include but are not limited to cotton pads, sponges, wooden applicators, emery boards, pumice stones, nail buffers, buffing bits, arbor or sanding bands, sleeves, toe separators and neck strips. These are single-use items and shall be disposed of in a waste receptacle immediately after use.

645—63.15(157) Reserved.

645—63.16(157) Infection control methods for creams, cosmetics and applicators.

63.16(1) Liquids, creams, waxes, powders and cosmetics used for clients must be kept in closed, labeled containers.

63.16(2) All fluids, semifluids and powders must be dispensed with an applicator or from a shaker, dispenser pump, or spray-type container.

a. Applicators made of a washable, nonabsorbent material shall be cleaned and disinfected before being used on a client and shall only be dipped into the container one time before being cleaned and disinfected again.

- b. Applicators made of wood shall be discarded after a single dip, which would be one use.
- c. Roll-on wax products are prohibited.
- d. The use of a styptic pencil is strictly prohibited; its presence in the workplace shall be prima facie evidence of its use. Any material used to stop the flow of blood shall be used in liquid or powder form.
- e. Neck dusters, brushes, and common shaving mugs and soap shall not be used in any establishment or school.

645—63.17(157) Events and services provided outside of a licensed establishment.

63.17(1) Licensed barber and cosmetologists, nail technicians, and estheticians may provide limited services at certain locations (e.g., weddings) outside of a licensed establishment. Limited services:

- a. Include makeup application, strip lashes, polish removal and application, and hairstyling
- b. Do not include the use of chemicals, lasers, or other machines.
- c. May include haircutting, subject to the limitations on location provided in subrule 63.17(2).

63.17(2) Licensees may provide limited services outside of a licensed establishment as follows:

- a. Limited services may not be provided unless scheduled through a licensed establishment.
- b. Limited services must be within the scope of practice of the licensed barber and cosmetologist, nail technician, or esthetician.
- c. Limited services, including haircutting, may be provided at:
 - 1. The temporary or permanent residence of a client.
 - 2. The hospital, health care facility, nursing home or convalescent home of a client.
- d. Limited services, excluding haircutting, may be provided at special events such as, but not limited to, weddings and photo shoots.

645—63.18(157) Prohibited hazardous substances and use of products and equipment.

63.18(1) No establishment or school shall have on the premises cosmetic products containing substances which have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products. Prohibited products include, but are not limited to, any product containing liquid methyl methacrylate monomer and methylene chloride. No product shall be used in a manner that is not approved by the FDA. Presence of a prohibited product in a establishment or school is prima facie evidence of that product's use in the establishment or school.

63.18(2) Pedicure instruments designed to remove skin from the bottoms and sides of feet, including but not limited to razor-edged, grating or rasp microplaners, are prohibited. The presence of such equipment is prima facie evidence of the equipment's use.

63.18(3) Procedures involving any animal (e.g., fish, leeches, snails) are prohibited in establishments and schools.

63.18(4) No establishment or school may have chamois buffers. If chamois buffers are observed in the workplace, their presence is prima facie evidence of their use.

63.18(5) No establishment or school may use plastic sleeves or envelopes to store cleaned and disinfected implements unless the implements stored in the plastic sleeves or envelopes have actually been sterilized pursuant to paragraph 63.13(2)“a.”

645—63.19(157) Proper protection of neck. A cape, haircloth, or similar article may not be placed directly against the neck of a client but shall be kept from direct contact with the client by means of a paper neckband or clean towel. A neckband of paper shall not be used more than once. Towels or cloth neckbands shall not be used more than once without proper laundering.

645—63.20(157) Proper laundering and storage. All cloth towels, robes and similar items shall be laundered in a washing machine with laundry detergent used according to the manufacturer's directions. All linens shall be dried until hot to the touch. No moisture shall be left in laundered items. A clean storage area shall be provided for clean towels and linen, and a covered hamper or receptacle marked “used” shall be provided for all soiled towels, robes and linens.

645—63.21(157) Animals. Dogs, cats, birds, or other animals are not permitted in establishments or schools. This rule does not apply to service animals as defined by the Americans with Disabilities Act or to fish in an aquarium provided the aquarium is maintained in a sanitary condition.

645—63.22(157) General maintenance. All areas of the establishment and school shall be clean and in good repair.

63.22(1) Walls, floors, and fixtures must be kept clean and in good repair at all times.

63.22(2) Carpeting shall only be allowed in the reception and hooded dryer areas.

645—63.23(157) Records. Client records, appointment records, and employment records shall be maintained for a period of no less than three years following the last date of entry. Proper safeguards shall be provided to ensure the safety of these records from destructive elements.

63.23(1) Records for events and services provided outside of a licensed establishment must include:

a. Client name and contact information.

b. Date, time and location of the event or service.

c. Name and license number of the licensee performing the service.

d. A signed and dated waiver stating that the client understands this limited service shall not include the use of chemicals, must be provided by a licensed practitioner and that all infection control procedures shall be followed.

63.23(2) Records for employment of blow-dry stylists must include:

a. Name and contact information of the employee.

b. Record of completion of a course on Iowa law, rules and infection control prior to employment as outlined in Iowa Code section 157.12C.

c. Hire date and termination date

d. A signed and dated waiver stating that the employee understands blow-dry stylist services may only be performed in a licensed establishment upon completion of a course on Iowa law, rules and infection control. This waiver must be completed every two years as a condition of employment.

63.23(3) Foot spa service area records are outlined in subrule 63.25(3).

645—63.24(157) Establishments and schools providing electrology or esthetics. An establishment or school in which electrology or esthetics is practiced shall follow the infection control rules and requirements pertaining to all establishments and schools and shall also meet the following requirements:

1. The electrology or esthetics room shall have adequate space, lighting and ventilation.

2. The floors in the immediate area where the electrology or esthetics is performed shall have an impervious, smooth, washable surface.

3. All service table surfaces shall be constructed of impervious, easily disinfected material.

4. Needles, probes and lancets shall be single-client use and disposable.

5. Licensees providing electrology services shall wear gloves.

6. Adequate access to a sink or running water shall be provided.

645—63.25(157) Cleaning and disinfecting circulating and noncirculating tubs, bowls, and spas.

63.25(1) After use for each client:

a. Drain the water and remove any visible debris;

b. Clean the surfaces according to the manufacturer's instructions, use a brush to remove all film, and rinse the tub, bowl, or spa basin;

c. Fill the tub, bowl, or spa basin with water and add disinfectant;

d. Allow the disinfectant to stand for noncirculating tubs, bowls, or basins or to circulate for circulating tubs, bowls, or basins for the time specified according to the manufacturer's instructions; and

e. After disinfection, drain and rinse with clean water.

63.25(2) At the end of the day, remove all removable parts from circulating tubs, such as filters, screens, drains, and jets, and clean and disinfect the removable parts as follows:

- a. Scrub with a brush and soap or detergent until free from debris, and then rinse.
- b. Completely immerse in disinfectant.
- c. Rinse and air dry.
- d. Replace the disinfected parts into the tubs, bowl, or basin or store the parts in a disinfected, dry, covered container that is isolated from contaminants.

63.25(3) Foot spa service area records. For each foot spa service, including but not limited to pedicures, a record shall be made of the date and time of the daily cleaning and disinfecting for all circulating and noncirculating tubs, bowls or basins. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting shall be made available upon request by a client, inspector or investigator. The record must be signed by a licensee and include the licensee's license number beside each recorded cleaning event. Foot spa records shall be maintained for two years from the date of the cleaning.

645—63.26(157) Paraffin wax. Paraffin wax shall be used according to the manufacturer's instructions and shall be used in such a manner so as not to contaminate the remaining wax in the paraffin bath. The following procedures apply:

1. The client shall be free of broken skin or any skin disorder;
 2. Hands or feet of a client shall be cleaned before being dipped into paraffin wax. The client's hands and feet shall not be dipped into the original wax container. The wax shall be removed from the original container and placed in a single-use bag before dipping. Any unused wax remaining in the single-use bag shall be discarded after dipping;
 3. Paraffin wax that has been removed from a client's hands or feet shall be discarded after each use; and
 4. Paraffin wax shall be kept free of any debris and kept covered when not in use.
- These rules are intended to implement Iowa Code section 147.7 and chapter 157.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 64
“Continuing Education for Barbering and Cosmetology Arts and Sciences”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.76, 157.14, 272C.2A, 272C.4 and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 157 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:50 to 2:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for barbers, cosmetologists, nail technicians, estheticians, electrologists, and instructors. The rulemaking includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that licensees stay up-to-date with infection control, laws, rules, and industry standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Iowa requires six hours of continuing education every two years. Private industry offers these courses, so the Board of Barbering and Cosmetology Arts and Sciences is not privy to exact costs, but based on research estimates, costs may be as low as \$30 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that barber and cosmetology arts and sciences licensees maintain up-to-date knowledge on infection control and practical service-related skills and, as a result, provide high quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Iowa Code section 272C.2A requires six hours of continuing education every two years for licensees. Private industry offers these courses, so the Board is not privy to exact costs, but based on research estimates, costs may be as low as \$30 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held since it is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.74 full-time equivalent (FTE) position, which includes answering questions from the public and licensees relating to practice standards, continuing education, Board meeting administration, and more.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The continuing education requirement is statutory and would require legislative change. The Board does not recommend a change in continuing education hours at this time. Iowa's six-hour continuing education requirement is consistent with or less than the requirements of a number of neighboring states, including Nebraska, Illinois, and Minnesota.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less restrictive alternative would be to reduce the amount of continuing education required. This would require a statutory change. The Board does not recommend a change in continuing education hours at this time. Iowa's six-hour continuing education requirement is consistent with or less than the requirements of a number of neighboring states, including Nebraska, Illinois, and Minnesota, depending on the type of license. For example, Illinois requires 14 hours of continuing education every two years for cosmetologists; Minnesota and Nebraska require 8 hours every two years.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Iowa Code section 272C.2A requires a minimum of six hours of continuing education for licensees. A change in these requirements would require legislative action. Staff held conversations with members of the Board inquiring whether the Board would recommend lowering the continuing education requirements. The Board does not recommend a legislative change at this time.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. This would require a legislative change. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Continuing education requirements for a minimum of six hours biannually at the time of the practitioner's license renewal are outlined in Iowa Code section 272C.2A. This is a small business opportunity for many licensees, including owners of establishments and schools, as long as the provider meets the requirements of the rules and seeks sponsorship from one of the identified entities prior to offering the class. Presenters also earn the same number of continuing education hours provided to licensees. The cost and the number of hours are minimal. Elimination of continuing education requirements could potentially remove a revenue stream from some practitioners.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 64 and adopt the following **new** chapter in lieu thereof:

CHAPTER 64
CONTINUING EDUCATION FOR BARBERING AND COSMETOLOGY ARTS AND SCIENCES

645—64.1(157) Definitions. For the purpose of these rules, the following definitions shall apply:

“*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.

“*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 barbering and cosmetology arts and sciences.

“*Continuing education*” means planned, organized learning acts acquired during 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.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65.

“*Practice discipline*” means the practice of electrology, esthetics, nail technology, or barbering and cosmetology as recognized by the board of barbering and cosmetology arts and sciences.

“*Prescribed practice*” means an area of specialty certified by the board within the scope of barbering and cosmetology arts and sciences.

645—64.2(157) Continuing education requirements.

64.2(1) The biennial continuing education compliance period shall begin on April 1 of one year and end on March 31 two years later.

64.2(2) Each biennium:

a. A licensee in this state shall be required to complete a minimum of six hours of continuing education that meets the requirements of rule 645—64.3(157,272C). A minimum of four hours of the six hours shall be in the prescribed practice discipline and a minimum of two hours of the six hours shall be in the content areas of Iowa barbering and cosmetology law and rules and sanitation. Individuals holding more than one active license shall obtain four hours of continuing education in each prescribed practice discipline and an additional two hours in the content areas of Iowa barbering and cosmetology law and rules and infection control.

b. A licensee who is an instructor of barbering and cosmetology arts and sciences shall obtain six hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the instructor’s practice license. A licensee must comply with all conditions of licensure including obtaining a minimum of two hours each biennium specific to Iowa barbering and cosmetology law and administrative rules as specified in subrule 64.3(2).

c. A licensee currently licensed in Iowa but practicing exclusively in another state may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state or states where the licensee practices. The licensee living and practicing in a state which has no continuing education requirement for renewal of a license shall not be required to meet Iowa’s continuing education requirement but shall pay all renewal fees when due.

d. A licensee shall be deemed to have complied with the continuing education requirements of this state during periods that the licensee:

- (1) Serves honorably on active duty in the military services, or
- (2) Is the spouse of an active duty military service person, or

(3) Is a government employee working in the person's licensed specialty and assigned to duty outside of the United States, or

(4) Is engaged in active practice and absent from the state approved by the board.

64.2(3) Requirements of 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.

64.2(4) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

64.2(5) No hours of continuing education shall be carried over into the next biennium. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

64.2(6) It is the responsibility of each licensee to finance the cost of continuing education.

64.2(7) Requirements for blow-dry stylists are outlined in Iowa Code section 157.12C.

645—64.3(157,272C) Standards.

64.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program.

At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s), sponsor(s);

(2) Number of program contact hours; and

(3) Evidence of successful completion of the course provided by the course sponsor.

64.3(2) *Specific criteria.* The licensee may obtain the minimum continuing education hours of credit outlined in paragraph 64.2(2) "a" by:

a. Attending workshops, trade shows, conferences or symposiums.

b. Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.

c. Attending programs on product knowledge, methods and systems. Continuing education shall be directly related to the technique and theory specific to the practice of barbering and cosmetology arts and sciences. No direct selling of products is allowed as part of a continuing education offering.

d. Attending business classes specific to owning or managing an establishment are acceptable. In addition to fulfilling the requirements in rule 645—64.2(157), for each prescribed practice license held by a licensee, the licensee is to complete four hours in each area.

64.3(3) *Specific criteria for providers and sponsors of continuing education.*

a. Continuing education shall be obtained by attending programs that meet the criteria in subrule 64.3(1). Individuals or groups may offer continuing education programs for any prescribed practice within the barbering and cosmetology arts and sciences that meet the criteria in rule 645—64.3(157,272C) offered by or with express sponsorship in advance of delivery by the following organization(s).

(1) Barbering and cosmetology arts and sciences organizations, including:

1. National, state or local associations;

2. Schools and institutes;

3. Textbook publishers.

(2) Universities, colleges or community colleges;

(3) If within the licensee's prescribed practice, institutes of laser technology or manufacturers of laser or microdermabrasion products.

b. A licensee who is a presenter of a continuing education program that meets the criteria in rule 645—64.3(157,272C) may receive credit once per biennium for the initial presentation of the program. The presenter may receive the same number of hours granted the attendees.

These rules are intended to implement Iowa Code section 272C.2 and chapter 157.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 65
“Discipline for Barbering and Cosmetology Arts and Sciences Licensees, Instructors, Establishments,
and Schools”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.76, 157.14, 272C.3, 272C.4 and
272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 157, and
272C

Public Hearing

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November 21, 2023
1:50 to 2:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call
Meeting link: meet.google.com/bfq-qacb-nwu
More phone numbers:
[tel.meet/bfq-qacb-nwu?pin=7324359836726](tel:meet/bfq-qacb-nwu?pin=7324359836726)

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Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
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Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

The proposed rulemaking provides protection to Iowans because it publicly defines disciplinary options when a licensee fails to act in a manner consistent with professional standards for licensees. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, a licensee can be subject to discipline against the license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Barbering and Cosmetology Arts and Sciences has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary

chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the barbering and cosmetology arts and sciences professions and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are associated with costs to the licensed professional/establishment.

Licensees may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fine amounts are not established in rule for these licensees and are determined by the Board.

The Board has statutory authority to impose a civil penalty on individuals practicing without a license.

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee takes action that is grounds for discipline. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of this work at 0.74 full-time equivalent (FTE) position. This additionally includes answering questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, and more. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rulemaking is ensuring public safety and maintaining a high level of care for Iowans. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received 74 complaints and issued six public disciplinary actions. While a low number of complaints compared to the total number of licensees could call into question the extent to which a profession needs to be regulated, the Board believes that regulation is necessary because inaction could increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there is only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the cost because inaction could increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline.

The Board has not identified a more cost-effective alternative to the current discipline process. There could be a consideration of reducing or eliminating grounds for discipline, but the Board believes these requirements are important in order to protect the public from infection risks. With the merger into a singular Board of Barbering and Cosmetology Arts and Sciences, the proposed rules will ensure standardization among all professions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee takes action that is grounds for discipline.

The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of this work at 0.74 FTE position. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$14,750 was paid into the General Fund from disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The amount of complaints received is relatively low, and costs reflect that. The Board believes the costs are justified because inaction could increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline.

In 2022, the Board received 74 complaints and issued six public disciplinary actions. While a low number of complaints compared to the total number of licensees could call into question the extent to which a profession needs to be regulated, the Board believes that regulation is necessary because inaction could increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating grounds for discipline, but the Board believes these requirements are important in order to protect the public from infection risks. With the merger into a singular Board of Barbering and Cosmetology Arts and Sciences, the proposed rules will ensure standardization amongst all professions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the barbering and cosmetology arts and sciences professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the barbering and cosmetology arts and sciences professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety. Many licensees are running a small business of their own. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 65 and adopt the following **new** chapter in lieu thereof:

CHAPTER 65

DISCIPLINE FOR BARBERING AND COSMETOLOGY ARTS AND SCIENCES LICENSEES,
INSTRUCTORS, ESTABLISHMENTS, AND SCHOOLS

645—65.1(157,272C) Definitions.

“*Board*” means the board of barbering and cosmetology arts and sciences.

“*Discipline*” means any sanction the board may impose upon barbering and cosmetology arts and sciences licensees, instructors, blow-dry stylists, establishments, and schools.

“*Licensure*” means the granting of a license to any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65.

645—65.2(157,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—Chapter 13 when the board determines that any of the acts or offenses listed in such chapter or in Iowa Code section 147.55 or any of the following have occurred:

65.2(1) Misappropriation of funds.

65.2(2) Failure to return the salon license to the board within 30 days of discontinuance of business under that license.

65.2(3) Permitting an unlicensed employee or person under the licensee's or the licensed school's or establishment's control to perform activities that require a license.

65.2(4) Permitting a licensed person under the licensee's or the licensed school's or establishment's control to practice outside the scope of the person's license.

65.2(5) A person is determined by the investigator to be providing barbering and cosmetology services and leaving a salon at the time of inspection, which shall be prima facie evidence that an unlicensed person is providing services for which a license is required.

65.2(6) Performing any of those practices coming within the jurisdiction of the board pursuant to Iowa Code chapter 157, with or without compensation, in any place other than a licensed establishment or a licensed school of barbering and cosmetology arts and sciences.

EXCEPTION: A licensee may practice at a location that is not a licensed establishment or school of barbering and cosmetology arts and sciences when:

- a.* Providing a service authorized under Iowa Code section 157.4 (Temporary Permits).
- b.* Providing a service under rule 645—63.17(157), “Events and services provided outside of a licensed establishment” (Iowa Code section 157.13(1) “a”).
- c.* Extenuating circumstances related to the physical or mental disability or death of a customer prevent the customer from seeking services at the licensed establishment or school.

645—65.3(157,272C) Unlawful practices. Practices by an unlicensed person or establishment that are subject to civil penalties include, but are not limited to:

65.3(1) Acts or practices by unlicensed persons that require licensure to practice barbering and cosmetology arts and sciences under Iowa Code chapter 157.

65.3(2) Acts or practices by unlicensed establishments that require licensure as an establishment or school of barbering and cosmetology arts and sciences under Iowa Code chapter 157.

These rules are intended to implement Iowa Code chapters 147, 157 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 81
“Licensure of Dietitians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 152A, 272C.3 and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 152A and
272C

Public Hearing

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Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

The intended benefit of proposed Chapter 81 is to set minimum standards for entry into the dietetics profession. Iowa residents, licensees and employers benefit from the chapter because it articulates the processes by which individuals apply for licensure as a dietitian in the state of Iowa, as directed in statute. The chapter publicly illustrates the process that will be used to license dietitians including renewal and reinstatement to ensure public safety through review of the integrity and competence of the practitioner. The chapter describes the application process, educational qualifications, and exam requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. Licensees have costs related to educational requirements to obtain a baccalaureate or postbaccalaureate degree. The license fee for a two-year license to practice to become an Iowa licensed dietitian is \$120 (license fees are specifically addressed in rule 645—5.6(147,152A)). Licensees must also pay an examination fee of \$200 to the Commission on Dietetic Registration (CDR).

These costs are comparable to surrounding states licensing fees. Nebraska’s license fee is \$114; licensees pay the CDR examination fee of \$200. Minnesota has a license fee of \$283.25 (includes \$100 application, \$150 initial licensure, \$33.25 criminal background check); licensees pay the CDR examination fee of \$200.

- Classes of persons that will benefit from the proposed rulemaking:

The benefits achieved justify the costs. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board of Dietetics believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners with knowledge of topics pertinent to the profession to ensure the safety and welfare of the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide training for dietitians. Additional private industries and educational institutions provide examinations and materials for preparation for the examination.

Licensing fees are \$120 every two years.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities. This includes reviews at the time of initial application and during reinstatement. Compliance audits are performed randomly on renewed licenses. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensure by consent agreements and discipline imposed by the Board are monitored by office staff. An executive officer, licensure specialist and investigator support the full scope of this work at 0.10 full-time equivalent (FTE) position. This additionally includes answering questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on this rule to state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure minimum competency. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. The cost of inaction would increase the potential for injury to the public that would remain unchecked without review prior to initial licensure, periodic compliance audits and complaint investigation. In addition, the chapter provides consistency related to the licensure of dietitians in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or

eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the chapter attempts to provide consistency related to the licensure of dietitians across the United States, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the rule attempts to provide consistency related to the licensure of dietitians across the United States, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the chapter attempts to provide consistency related to the licensure of dietitians across the United States, which makes obtaining licensure in multiple states simpler for applicants.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for dietitians. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 81 and adopt the following **new** chapter in lieu thereof:

DIETITIANS

| | |
|------------|-------------------------------------|
| CHAPTER 81 | LICENSURE OF DIETITIANS |
| CHAPTER 82 | CONTINUING EDUCATION FOR DIETITIANS |
| CHAPTER 83 | DISCIPLINE FOR DIETITIANS |

CHAPTER 81
LICENSURE OF DIETITIANS

645—81.1(152A) Definitions.

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of dietetics.

“*Consultation*” means the practice of providing professional advice to another dietitian or other professional in a particular case and for a limited time, in affiliation with, and at the request of, a dietitian licensed in this state.

“*Dietetics*” means the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and from behavioral and social sciences to achieve and maintain an individual’s health.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*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.

“*Licensee*” means any person licensed to practice as a dietitian in the state of Iowa.

“*License expiration date*” means the fifteenth day of the birth month every two years following initial licensure.

“*Nutrition assessment*” means the evaluation of the nutrition needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and to recommend appropriate nutritional intake, including enteral and parenteral nutrition.

“*Nutrition counseling*” means advising and assisting individuals or groups, with consideration of cultural background and socioeconomic status, about appropriate nutritional intake by integrating information from the nutrition assessment with information about food and other sources of nutrients and meal preparation.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—81.15(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice dietetics to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of dietetics to license persons who have the same or similar qualifications as those required in Iowa.

“*Registered dietitian*” means a dietitian who has met the standards and qualifications of the Commission on Dietetic Registration, a member of the National Commission for Certifying Agencies.

“*Reinstatement*” means the process as outlined in rule 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.

“*Supervision of nonlicensees*” means any of the following: delegation of duties, direct oversight, or indirect oversight of employees or other persons not licensed by the board.

645—81.2(152A) Nutrition care. The primary function of dietetic practice is the provision of nutrition care services that include:

1. Assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting.
2. Establishing priorities, goals, and objectives that meet nutrition needs and are consistent with available resources and constraints.
3. Providing nutrition counseling concerning health and disease.
4. Developing, implementing, and managing nutrition care systems.
5. Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services.

645—81.3(152A) Requirements for licensure. The following criteria apply to licensure:

81.3(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.6(147,152A).

81.3(2) No application will be considered by the board until the applicant satisfactorily completes the registration examination for dietitians administered by the Commission on Dietetic Registration (CDR). The board will accept the passing score set by the CDR. Verification of satisfactory completion may be established by one of the following:

- a. The applicant sends to the board a copy of the CDR registration card;
- b. The CDR sends an official letter directly to the board to verify that the applicant holds registration status; or
- c. The CDR posts web-based verification that the applicant holds registration status.

81.3(3) A license is not required for dietitians who are in this state for the purpose of consultation, in accordance with rule 645—81.1(152A), when they are licensed in another state, U.S. territory, or country, or have received at least a baccalaureate degree in human nutrition from a U.S. regionally accredited college or university.

81.3(4) Incomplete applications that have been on file in the board office for more than two years will be considered invalid and destroyed.

645—81.4(152A) Educational qualifications.

81.4(1) The applicant shall possess a baccalaureate degree or postbaccalaureate degree from a U.S. regionally accredited college or university with a major course of study in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management, or in an equivalent major course of study, which meets minimum academic requirements as established by the Accreditation Council for Education in Nutrition and Dietetics (ACEND) of the Academy of Nutrition and Dietetics (AND) and is approved by the board.

81.4(2) A foreign-trained dietitian shall:

- a. Provide an official letter sent directly from the Commission on Dietetic Registration (CDR) to the board to verify that the applicant has met the minimum academic and didactic program requirements of the CDR. Foreign degree equivalency evaluation requirements of the Accreditation Council for Education in Nutrition and Dietetics (ACEND) of the Academy of Nutrition and Dietetics (AND) are listed on the ACEND website, and
- b. Provide evidence of meeting all other requirements in these rules.

645—81.5(152A) Supervised experience. The applicant shall complete an accredited competency-based supervised experience program approved by the Accreditation Council for Education in Nutrition and Dietetics (ACEND) of the Academy of Nutrition and Dietetics (AND).

645—81.6(152A) Licensure by endorsement. An applicant who has been a licensed dietitian under the laws of another jurisdiction may 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:

- 81.6(1)** Meets the requirements of rule 645—81.4(152A).

81.6(2) 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:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

645—81.7(152A) License renewal.

81.7(1) The biennial license renewal period begins on the sixteenth day of the licensee's birth month and ends on the fifteenth day of the licensee's birth month two years later. The licensee is responsible for renewing the license prior to its expiration.

81.7(2) An initial license issued by the board may be valid for an 18- to 29-month period. When an initial license is renewed, it will be placed on a two-year renewal period identified in subrule 81.9(1).

81.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—82.2(152A) and the mandatory reporting requirements of subrule 81.9(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.

81.7(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 and dependent adults in Iowa will complete the applicable department of health and human services training relating to the identification and reporting of child and dependent adult abuse as required by Iowa Code section 232.69(3) "b."

b. Written documentation of training completion should be maintained for three years.

c. The requirement for mandatory training for identifying and reporting child and dependent adult abuse is 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 rule 645—4.14(272C).

d. The board may select licensees for audit of compliance with the requirements in paragraphs 81.9(4) "a" and "b."

81.7(5) Upon receiving the information required by this rule and the required fee, a two-year license will be administratively issued. In the event the board receives adverse information on the renewal application, the renewal license will be issued but the board may refer the adverse information for further consideration or disciplinary investigation.

81.7(6) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

81.7(7) *Late renewal.* A license not renewed by the expiration date will be assessed a late fee as specified in 645—subrule 5.6(3). Completion of renewal requirements and submission of the late fee within the grace period are needed to renew the license.

81.7(8) *Inactive license.* A license not renewed by the end of the grace period is inactive. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a dietitian in Iowa until the license is reactivated. A licensee who practices as a dietitian in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

81.7(9) *Renewal of a reactivated license.* A licensee who reactivates the license in accordance with rule 645—81.15(17A,147,272C) will not be required to renew the license until the next renewal two years later if the license is reactivated within six months prior to the license renewal date.

645—81.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

81.8(1) Submit a reactivation application and pay the reactivation fee as specified in 645—Chapter 5.

81.8(2) Provide verification of current competence to practice dietetics by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license.

(2) Verification of completion of 30 hours of continuing education within two years of the application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license.

(2) Verification of completion of 60 hours of continuing education within two years of application for reactivation.

645—81.9(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 rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—81.15(17A,147,272C) prior to practicing dietetics in this state.

645—81.10(152A,272C) Telehealth visits. A licensee may provide dietetic services to an individual or a group utilizing a telehealth visit if the dietetic services are provided in accordance with all the requirements of this chapter.

81.10(1) "Telehealth visit" means the provision of dietetic services by a licensee to an individual or a group using technology where the licensee and the individual or group are not at the same physical location for the therapy session.

81.10(2) A licensee engaged in a telehealth visit will utilize technology that is secure and HIPAA-compliant and that includes, at a minimum, audio and video equipment that allows two-way real-time interactive communication between the licensee and the individual or group. A licensee may use non-real-time technologies to prepare for a session or to communicate with an individual or a group between sessions.

81.10(3) A licensee engaged in a telehealth visit will be held to the same standard of care as a licensee who provides in-person dietetic services. A licensee will not utilize a telehealth visit if the standard of care for the particular services cannot be met by using technology.

81.10(4) Any licensee who provides a telehealth visit to an individual or a group located in Iowa shall be licensed in Iowa.

81.10(5) Prior to the first telehealth visit, a licensee is to obtain informed consent from the individual or group specific to the services that will be provided in a telehealth visit. At a minimum, the informed consent shall specifically inform the individual or group of the following:

- a.* The risks and limitations of the use of technology to provide dietetics services;
- b.* The potential for unauthorized access to protected health information; and
- c.* The potential for disruption of technology during a telehealth visit.

81.10(6) A licensee will identify in the clinical record when dietetic services are provided utilizing a telehealth visit.

These rules are intended to implement Iowa Code chapters 17A, 147, 152A, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 82
“Continuing Education for Dietitians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 152A, 272C.3 and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 152A and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:10 to 2:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Iowa Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 82 sets forth continuing education requirements for dietitians. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that dietitians maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Iowa requires 30 hours of continuing education every two years. This is consistent with a review of surrounding states. Illinois and Nebraska also require 30 hours every two years, Minnesota requires 45 every three years, Missouri requires 75 every five years, and South Dakota requires 15 every year.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that athletic trainer licensees meet specific continuing education requirements to ensure up-to-date knowledge on practical service-related skills and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry offers these courses, so the Board of Dietetics is not privy to exact costs.

The cost to obtain continuing education is quite variable depending on the focus of the practitioner and may range anywhere from free to more than \$50 per hour. Research estimates it to be around \$150 every two years for a licensee to meet Iowa's requirements. There are multiple entities that provide continuing education courses to licensees.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities at approximately 0.06 full-time equivalent (FTE) position, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. This includes answering questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact on state revenues as a result of this rulemaking. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board does not recommend a change in continuing education hours at this time. Iowa's continuing education requirements are in line with neighboring states. Iowa requires 30 hours of continuing education every two years. This is consistent with a review of surrounding states. Illinois and Nebraska also require 30 hours every two years, Minnesota requires 45 every three years, Missouri requires 75 every five years, and South Dakota requires 15 every year.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Private industry offers these courses, so the Board is not privy to exact costs.

The cost to obtain continuing education is quite variable depending on the focus of the practitioner and may range anywhere from free to more than \$50 per hour. Research estimates it to be around \$150 every two years for a licensee to meet Iowa's requirements. There are multiple entities that provide continuing education courses to licensees.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring if the Board would recommend lowering the continuing education requirements. The Board does not recommend a change in continuing education hours at this time.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 82 and adopt the following **new** chapter in lieu thereof:

CHAPTER 82 CONTINUING EDUCATION FOR DIETITIANS

645—82.1(152A) Definitions.

“*Active license*” means the license is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*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 dietetics.

“*Continuing education*” means planned, organized learning acts acquired during 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.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a dietitian in the state of Iowa.

“*Webinar*” means a web-based seminar, presentation, lecture, or workshop that is transmitted over the web.

645—82.2(152A) Continuing education requirements.

82.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on the sixteenth day of the licensee’s birth month and ending on the fifteenth day of the birth month two years later. Each biennium, each person who is licensed to practice as a dietitian in this state will be required to complete a minimum of 30 hours of continuing education approved by the board.

82.2(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 30 hours of continuing education per biennium for each subsequent license renewal.

82.2(3) Hours of continuing education credit may be obtained in accordance with the definitions and standards in these rules.

82.2(4) No hours of continuing education will be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

82.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—82.3(152A,272C) Standards.

82.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of the presenters;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance including:
 - (1) Date(s), location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

82.3(2) *Specific criteria.*

a. Continuing education hours of credit may be obtained by completing programs/activities that reflect the educational needs of the dietitian and the nutritional needs of the consumer. Continuing education programs/activities that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth will be accepted for continuing education.

b. The licensee may engage in other types of activities identified in the individual licensee’s professional development portfolio for Commission on Dietetic Registration (CDR) certification.

c. The licensee may engage in programs/activities via webinars and independent study, in accordance with the definitions and standards in these rules.

d. The licensee may submit completed training to comply with mandatory reporter training requirements, as specified in 645—subrule 81.9(4). Hours reported for credit will not exceed the hours required to maintain compliance with required training.

e. The following areas are appropriate for continuing education credit:

- (1) Sciences related to dietetic practice, education, or research including biological sciences, food and resource management and behavioral and social sciences to achieve and maintain people’s health.

- (2) Dietetic practice related to assessment, counseling, teaching, or care of clients in any setting.
- (3) Management or quality assurance of nutritional care delivery systems.
- (4) Dietetic practice related to community health needs.

f. Criteria for hours of credit are as follows:

(1) Academic coursework. Coursework for credit must be completed at a regionally accredited U.S. college or university. In order for the licensee to receive continuing education credit, the coursework must be beyond entry-level dietetics.

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(2) Scholarly publications. Publication may be approved if submitted in published form in the continuing education documentation file of the licensee. All publications must appear in refereed professional journals. Material related to work responsibilities, such as diet and staff manuals, and publications for the lay public are unacceptable. Continuing education credit hours may be reported using the following guidelines:

1. Senior author: first of two or more authors listed.
2. Coauthor: second of two authors listed.
3. Contributing author: all but senior of the three or more authors.

4. Research papers:

- Single author 10 hours
- Senior author 8 hours
- Coauthor 5 hours
- Contributing author 3 hours

5. Technical articles:

- Single author 5 hours
- Senior author 4 hours
- Coauthor 3 hours
- Contributing author 2 hours

6. Information-sharing articles: 1 hour

7. Abstracts:

- Senior author 2 hours
- Coauthor 1 hour

(3) Poster sessions. Continuing education credit may be obtained for attending juried poster sessions at national meetings that meet the criteria for appropriate subject matter as required in these rules. One hour of continuing education credit is allowed for each 12 posters reviewed not to exceed six hours in a continuing education biennium.

(4) Presenters. Presenters may receive continuing education credit. Presentations to the lay public will not receive credit for continuing education. For each 50-minute hour of presentation, two hours of credit for continuing education will be earned. Presenters of poster sessions at national professional meetings will receive a maximum of two hours of credit per topic. A copy of the abstract or manuscript and documentation of the peer review process must be included in the licensee's documentation list.

(5) Staff development training. Staff development training that meets the criteria in this subrule will be credited on the basis of the defined hour of continuing education stated in these rules.

These rules are intended to implement Iowa Code section 272C.2 and chapter 152A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 83
“Discipline for Dietitians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 152A, 272C.3 and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 152A and
272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:10 to 2:30 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written comments or oral in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 83 defines actions that are inconsistent with professional standards for licensees, which are established to protect the consumer and colleagues. Actions inconsistent with professional standards could result in disciplinary actions against a practitioner’s license.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. Proposed Chapter 83 contains only those disciplinary grounds that are unique to the dietetics licensees and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are associated with costs to the licensed professional. Licensees may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fine amounts are not established in rule for these licensees and are determined by the Board of Dietetics. The Board has statutory authority to impose a civil penalty on individuals practicing without a license.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed chapter since it clarifies compliance and potential consequences for noncompliance. The benefit is being achieved since the Board only had nine

founded violations between 2004 and 2013. No public action has been taken since then. The low number of public discipline cases demonstrates the effectiveness of the continuing education requirements in ensuring licensees remain current in their professional knowledge and providing quality care to Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes the benefits achieved justify the costs because the cost of inaction would increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline. Fees incurred by the professional are up to \$1,000 per violation.

The Board has not identified a more cost-effective alternative to the current discipline process. There could be a consideration of reducing or eliminating grounds for discipline, but the Board believes these requirements are important in order to protect the public from infection risks.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee takes action that is grounds for discipline. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer, licensure specialist and investigator supports the full scope of this work at 0.16 full-time equivalent (FTE) position. This additionally includes answering questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees, not the State. There is no anticipated impact on state revenues as a result of this rulemaking. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The amount of complaints received is relatively low, and costs reflect that. The Board believes the costs are justified because inaction could increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline. The cost to review and address the standards of professional behavior is justified by the benefit of protecting the public.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

The Boards and Commissions Review Committee recommended elimination of the Board.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

While there has been some standardization of consideration of criminal convictions, the Board has not recommended a less restrictive alternative to public protection.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. Proposed Chapter 83 contains only those disciplinary grounds that are unique to the dietetics licensees and are therefore excluded from the general disciplinary chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 83 and adopt the following **new** chapter in lieu thereof:

CHAPTER 83 DISCIPLINE FOR DIETITIANS

645—83.1(152A,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

Failure to comply with the Academy of Nutrition and Dietetics/Commission on Dietetic Registration, Code of Ethics for the Profession of Dietetics and Process for Consideration of Ethics Issues, effective January 1, 2010, hereby adopted by reference. Copies may be obtained from the Academy of Nutrition and Dietetics/Commission on Dietetic Registration website at www.eatright.org/code-of-ethics-for-rdns-and-ndtrs.

This rule is intended to implement Iowa Code chapters 147, 152A and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 100
“Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 156, 147.36, and 147.76
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 156, and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:30 p.m.

6200 Park Avenue
Des Moines, Iowa 50321
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

Proposed Chapter 100 provides the duties of a funeral director for embalming, cremation, and maintaining the chain of custody of a decedent, and the records to be retained by a funeral establishment. This chapter articulates minimum acceptable standards for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are costs to the licensees and the establishment associated with the standard of practice and to maintain compliance. For a new establishment, that might include fees associated with city zoning and Department of Natural Resources (DNR) requirements. The Board of Mortuary Science believes these costs are necessary to ensure the licensee is competent to perform the duties within the scope of practice. At this time, the Board is unable to calculate the costs incurred to the public or the licensee.

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes but is not limited to oversight of practice standards, questions from licensees and the public, and administration of board meetings. An executive officer supports the work of this Board at approximately 0.29 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

There are approximately 876 licensed individuals who provide these services to Iowans. Since 2021, the Board has opened and investigated 35 complaints. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the Board believes regulation is necessary to provide consumer protection during all aspects of the funeral process.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board believes the benefit is that the chapter provides state and federal guidelines a licensee must follow to protect the chain of custody of the decedent and the public.

Staff salaries to support the work of the board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes but is not limited to oversight of practice standards, questions from licensees and the public, and administration of Board meetings. An executive officer supports the work of this Board at approximately 0.29 FTE position. Staff salaries to support the work of the board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

A funeral and related services are the third-largest expenditure a consumer will make in the consumer's lifetime at a vulnerable time. These regulations help to ensure funeral directors conform to these minimum standards for consumer protection. If this profession were not regulated, it is likely that untrained or undertrained individuals would attempt to provide services to Iowa families, increasing the likelihood of potential fraudulent or dangerous practices.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Licensing is the highest form of regulation. Licensure of funeral directors and establishments is the supported model in the majority of states. The standards for practice articulated in these rules could be reduced; however, the Board would have concerns about the potential for harm to Iowa patients.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Licensing is the highest form of regulation. Licensure of funeral directors and establishments is the supported model in the majority of states. The standards for practice articulated in these rules could be reduced; however, the Board would have concerns about deceptive practices to Iowa consumers.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Licensing is the highest form of regulation. Licensure of funeral directors and establishments is the supported model in the majority of states. The standards for practice articulated in these rules could be reduced; however, the Board would have concerns about deceptive practices to Iowa consumers.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether a business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for funeral directors and establishments. While some funeral directors may work in an independently owned establishment, others may work for multiple establishments owned by the same firm. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 100 and adopt the following **new** chapter in lieu thereof:

FUNERAL DIRECTORS

| | |
|-------------|--|
| CHAPTER 100 | PRACTICE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND CREMATION ESTABLISHMENTS |
| CHAPTER 101 | LICENSURE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND CREMATION ESTABLISHMENTS |
| CHAPTER 102 | CONTINUING EDUCATION FOR FUNERAL DIRECTORS |
| CHAPTER 103 | RESERVED |
| CHAPTER 104 | DISCIPLINARY PROCEEDINGS |
| CHAPTER 105 | ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES |

CHAPTER 100
PRACTICE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS,
AND CREMATION ESTABLISHMENTS

645—100.1(156) Definitions.

“*Alternative container*” means an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed wood, composition materials (with or without an outside covering) or like materials which prevents the leakage of body fluid.

“*Authorized person*” means that person or persons upon whom a funeral director may reasonably rely when making funeral arrangements including, but not limited to, embalming, cremation, funeral services, and the disposition of human remains pursuant to Iowa Code section 144C.5.

“*Autopsy*” means the postmortem examination of a human remains.

“*Board*” means the board of mortuary science.

“Body parts” means appendages or other portions of the anatomy that are from a human body.

“Burial.” See *“Interment.”*

“Burial transit permit” means a legal document authorizing the removal and transportation of a human remains.

“Casket” means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic or like material and ornamented and lined with fabric.

“Cemetery” means an area designated for the final disposition of human remains.

“Columbarium” means a structure, room or space in a mausoleum or other building containing niches or recesses for disposition of cremated remains.

“Cremated remains” means all the remains of the cremated human body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions and may possibly include the residue of any foreign matter including casket material, bridgework or eyeglasses that were cremated with the human remains.

“Cremation” means the technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation will include the processing, and may include the pulverization, of the bone fragments.

“Cremation authorization form” means a form, completed and signed by a funeral director and authorized person, to accompany all human remains accepted for cremation.

“Cremation chamber” means the enclosed space within which a cremation takes place.

“Cremation establishment” means any person, partnership or corporation that is licensed by the board and provides any aspect of cremation services.

“Cremation permit” means a permit issued by a medical examiner allowing cremation for human remains.

“Cremation room” means the room in which the cremation chamber is located.

“Crypt” means a chamber in a mausoleum of sufficient size to contain casketed human remains.

“Custody” means immediate charge and control exercised by a person or an authority.

“Dead body.” See *“Human remains.”*

“Death certificate” means a legal document containing vital statistics pertaining to the life and death of the decedent.

“Decedent.” See *“Human remains.”*

“Disinterment” means to remove a human remains from its place of final disposition.

“Disinterment permit” means a permit from the department of health and human services which allows the removal of a human remains from its original place of burial, entombment or interment for the purpose of autopsy or reburial.

“Disinterment permit number” means the number assigned to a disinterment permit by the department of health and human services, giving the funeral director the authority to remove a human remains from its place of final disposition.

“Embalming” means the disinfection or temporary preservation of human remains, entire or in part, by the use of chemical substances, fluids or gases in the body, or by the introduction of same into the body by vascular or hypodermic injections, or by surface application into or on the organs or cavities for the purpose of temporary preservation or disinfection.

“Embalming record” means a record completed by the licensed funeral director or registered intern for each body embalmed in Iowa, or otherwise prepared for disposition by the licensee. “Embalming record” includes, at a minimum, a case analysis and a detailed listing of the procedures or treatments or both performed on the deceased.

“Entombment” means to place a casketed body or an urn containing cremated remains in a structure such as a mausoleum, crypt, tomb or columbarium.

“Final disposition” means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.

“Funeral ceremony” means a service commemorating the decedent.

“Funeral director” means a person licensed by the board to practice mortuary science.

“*Funeral establishment*” means a place of business as defined and licensed by the board devoted to providing any aspect of mortuary science.

“*Funeral rule*” means the Federal Trade Commission Funeral Rule.

“*Funeral services*” means any services which may be used to (1) care for and prepare human remains for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or final disposition of human remains.

“*Holding facility*” means an area isolated from the general public that is designated for the temporary retention of human remains.

“*Human remains*” means a deceased human being for which a death certificate or fetal death certificate is required.

“*Interment*” means to place a casketed human remains or an urn containing cremated remains in the ground.

“*Intern*” means a person registered by the board to practice mortuary science under the direct supervision of a preceptor certified by the board.

“*Mausoleum*” means an aboveground structure designed for entombment of human remains.

“*Medical examiner*” means a public official whose primary function is to investigate and determine the cause of death when death may be thought to be from other than natural causes.

“*Memorial ceremony*” means a service commemorating the decedent.

“*Niche*” means a recess or space in a columbarium or mausoleum used for placement of cremated human remains.

“*Preparation room*” means a room in a funeral establishment where human remains are prepared, sanitized, embalmed or held for ceremonies and final disposition.

“*Pulverization*” means a process following cremation which reduces identifiable bone fragments into granulated particles.

“*Removal*” means the act of taking a human remains from the place of death or place where a human remains is being held to a funeral establishment or other designated place.

“*Removal technician*” means a person registered with the board to perform removals.

“*Scattering area*” means a designated area where cremated remains may be commingled with other cremated remains.

“*Temporary cremation container*” means a durable receptacle designed for short-term retention of cremated remains.

“*Their own dead*” refers to the legal authority the authorized person has regarding a human remains.

“*Topical disinfection*” means the direct application of chemical substances on the surface of a human remains for the purpose of temporary preservation or disinfection.

“*Transfer.*” See “*Removal.*”

“*Universal precautions*” means a concept of care based upon the assumption that all blood and body fluids, and materials that have come into contact with blood or body fluids, are potentially infectious as prescribed by the Centers for Disease Control and Prevention (CDC).

“*Urn*” means a receptacle designed for permanent retention of cremated remains.

645—100.2(156) Funeral director duties.

100.2(1) Practices requiring a funeral director’s license include but are not limited to:

- a. Removal as specified in rule 645—100.4(142,156).
- b. Embalming human remains as specified in rule 645—100.6(156) and completing embalming records as specified in paragraph 100.11(2)“d.”
- c. Conducting funeral arrangements as specified in subrule 100.7(2).
- d. Conducting funeral services when contracted to do so, including:
 - (1) Direct supervision of visitation and viewing.
 - (2) Funeral and memorial ceremonies.
 - (3) Committal and final disposition services.
- e. Conducting cremation services as specified in rule 645—100.10(156).
- f. Signing death certificates and performing associated duties under Iowa Code chapter 144.

100.2(2) Delegation of professional tasks.

a. Registered interns. Registered interns may provide funeral director services identified in paragraphs 100.2(1) “a” through “f” under the direct supervision of an Iowa-licensed preceptor. A registered intern will not sign a death certificate.

b. A funeral director may delegate solely the transportation of unembalmed human remains to a registered removal technician pursuant to subrule 100.4(3).

100.2(3) CDC universal precautions and OSHA standards. The funeral director will observe current guidelines of universal precautions as prescribed by the Centers for Disease Control (CDC) as well as Occupational Safety and Health Administration (OSHA) standards.

100.2(4) Funeral directors who provide mortuary science services from funeral establishments located in another state. A funeral director who holds an active Iowa funeral director’s license and whose practice is conducted from a funeral establishment located in another state may provide mortuary science services in Iowa if the establishment holds a current license in the state in which it is located, if such a license is required.

100.2(5) Withholding human remains. A funeral director will not withhold human remains based solely on nonpayment of fees.

645—100.3(156) Permanent identification tag.

100.3(1) The funeral director who assumes possession of a human remains will attach a permanent identification tag.

100.3(2) The identification tag will initially contain, at a minimum, the name of the deceased.

100.3(3) Before final disposition, the identification tag will contain the name of the deceased and the date of birth, date of death and social security number of the deceased and the name and license number of the funeral establishment in charge of disposition.

100.3(4) The identification tag will be attached to the human remains throughout the entire time the human remains are in the possession of the funeral establishment and will remain with the human remains.

645—100.4(142,156) Removal and transfer of human remains.

100.4(1) Removal and transfer of human remains. The funeral director will perform the following duties upon notification of a death.

a. Comply with jurisdictional authority, with respect to medicolegal responsibilities, regarding the removal of the human remains.

b. Provide signature and license number when removing a human remains from a hospital, nursing establishment or any other institution involved with the care of the public.

100.4(2) After the funeral director has assumed custody of the human remains, the funeral director may delegate the task of transferring the human remains to an unlicensed employee, removal technician, or agent. Prior to transfer, the funeral director will topically disinfect the body, secure all body orifices to retain all secretions, place the human remains in a leakproof container for transfer that will control odor and prevent the leakage of body fluids, and issue a burial transit permit.

100.4(3) A funeral director may delegate the transportation of unembalmed human remains to an unlicensed employee, removal technician, or agent of the funeral establishment without first assuming custody and without topically disinfecting or securing body orifices if all of the following are true:

a. The transportation is to or from the medical examiner’s office, or otherwise at the direction of the medical examiner;

b. The remains are placed in a leakproof container by medical examiner personnel; and

c. The employee, removal technician, or agent is issued a burial transit permit or other evidence of authorization.

100.4(4) An unlicensed employee, removal technician, or agent referred to in subrules 100.4(2) and 100.4(3) must complete the annual OSHA training related to blood-borne pathogens, training on in-person equipment and disposition of remains; and ethics and professional boundaries.

645—100.5(135,144) Burial transit permits. A licensed funeral director may issue a burial transit permit for the removal and transfer of human remains, according to state law and the administrative rules promulgated by the department of health and human services.

645—100.6(156) Preparation and embalming activities.

100.6(1) The funeral director will perform the following duties prior to and during embalming according to commonly accepted industry standards.

a. Obtain authorization for embalming from an authorized person. If permission to embalm cannot be obtained from the authorized person, the funeral director may proceed with the embalming if necessary to comply with subrule 100.6(3).

b. Embalm entirely in private. No one except the funeral director, intern, immediate family, or student will be allowed in the preparation room without the written permission of the authorized person. A student must be under the direct physical supervision of the funeral director and currently enrolled and attending a program of mortuary science which is recognized by the board to be allowed in the preparation room without written permission during the embalming.

c. Keep the human remains properly covered at all times.

d. Conduct a preembalming case analysis of the human remains. Recognize the potential chemical effects on the body and select the proper embalming chemicals based upon the analysis.

e. Position the human remains on the preparation table and pose the facial features.

f. Select points of drainage and injection, and raise the necessary vessels.

g. Embalm by arterial and cavity injection of embalming chemicals. If the condition of the human remains does not allow arterial and cavity injection of embalming chemicals, topical embalming, using appropriate chemicals and procedures, will be performed.

h. Evaluate the distribution of the embalming chemicals and perform treatment for discoloration, vascular difficulties, decomposition, dehydration, purge and close any incisions once the arterial and cavity injection of the embalming chemicals is complete.

100.6(2) Postembalming activities. The funeral director will perform the following duties at the conclusion of the embalming activities if necessary.

a. Pack or otherwise secure all body orifices with material which will absorb and retain all secretions.

b. Apply chemicals topically and perform hypodermic treatments.

c. Bathe, disinfect and reposition the human remains.

d. Clean and disinfect the embalming instruments, equipment and preparation room.

e. Perform any restorative treatments.

f. Select and apply the appropriate cosmetic treatments.

g. Prepare the human remains for viewing.

100.6(3) Care of the unembalmed human remains.

a. Embalming may be omitted provided that interment or cremation is performed within 72 hours after death or within 24 hours of taking custody if a human remains was previously in the custody of others, whichever is longer.

b. If refrigeration is utilized, embalming or final disposition may be extended up to 72 hours longer than the maximum period provided in paragraph 100.6(3) "a." The body must be kept between 38 and 42 degrees Fahrenheit.

c. If viewing of the unembalmed human remains is requested, the human remains will be topically disinfected and all body orifices will be packed or otherwise secured with material which will absorb and retain all secretions.

645—100.7(156) Arranging and directing funeral and memorial ceremonies.

100.7(1) *The Federal Trade Commission.* The funeral director will observe current guidelines of the Federal Trade Commission (FTC) funeral rule.

100.7(2) *Arrangement conference activities.* If responsible, the funeral director will perform the following duties associated with arranging ceremonies and the final disposition of a human remains.

a. Gather necessary statistical and biographical information relating to the decedent and explain the varied use of the information gathered.

b. Present, discuss and explain the mandated FTC price lists and assist or provide the consumer with:

- (1) The types of ceremony or final disposition.
- (2) The specific goods and services.
- (3) The prices of any goods and services.
- (4) The written, itemized statement of the funeral goods and services.
- (5) A general price list.

At the conclusion of arrangements, the itemized statement will be signed by the purchaser and the funeral director.

100.7(3) *Directing of funeral and memorial ceremonies.* If responsible, the funeral director will perform the following duties:

- a.* Direct and supervise ceremonies.
- b.* Direct and supervise final disposition.

645—100.8(142,156) Unclaimed human remains for scientific use.

100.8(1) A human remains is unclaimed when:

- a.* The decedent did not express a desire to be interred, entombed or cremated.
- b.* Relatives or friends of the decedent did not request that the decedent's human remains be interred, entombed or cremated.

100.8(2) Friend distinguished from casual acquaintance. A friend will be distinguished from a casual acquaintance by the friend's having been closely associated with the decedent during the decedent's lifetime.

100.8(3) Delivery of human remains for scientific purposes. The funeral director, the medical examiner or managing officer of a public health institution, hospital, county home, penitentiary or reformatory will notify the department of health and human services as soon as any unclaimed human remains which may be suitable for scientific purposes will come into the person's custody.

100.8(4) Department instructions. When the department of health and human services receives notice, the funeral director will be instructed as to the proper disposition of a human remains.

100.8(5) Expenses incurred by funeral director. The expenses incurred by the funeral director for the transportation of a human remains to a medical college will be paid by the medical college receiving the human remains.

645—100.9(144) Disinterments. A funeral director in charge of a disinterment will ensure that the disinterment is performed in accordance with rules promulgated by the department of health and human services and will first secure a disinterment permit issued by the department of health and human services.

100.9(1) No person will disinter a human remains or cremated remains unless the funeral director in charge of the disinterment has a numbered disinterment permit which has been issued by the department of health and human services or by an order of the district court of the county in which the human remains or cremated remains are interred or entombed.

100.9(2) All disinterment permits will be requested and provided by the department of health and human services.

100.9(3) All disinterment permits will be signed by the authorizing person.

100.9(4) Disinterment permits will be furnished upon request from the department of health and human services and will remain valid for 30 days after issuance.

100.9(5) Disinterment permits will only be issued to the funeral director, and the disinterment must be done under the direct supervision of the funeral director.

100.9(6) Disinterment permits will be required for any relocation of a human remains from the original site of interment or entombment if the purpose is for autopsy or reburial.

100.9(7) No disinterment permit is necessary to remove a human remains or cremated remains from a holding facility for interment or entombment in the same cemetery where being temporarily held.

100.9(8) A funeral director may await a court order before proceeding with disinterment if the funeral director is aware of a dispute among:

- a. Persons who are members of the same class of persons described in 641—subrule 97.14(4) as having authority to control the human remains; or
- b. Persons who are authorized pursuant to 641—subrule 97.14(4) and the executor named in the decedent's will or personal representative appointed by the court.

645—100.10(156) Cremation of human remains.

100.10(1) Record keeping.

a. Delivery receipt.

(1) When a human remains is delivered to a cremation establishment, the cremation establishment will furnish to the delivery person a delivery receipt containing:

1. The name, address, age, gender, and cause of death of the decedent whose human remains are delivered to the cremation establishment.
2. The date and time of delivery and the type of container that contains the human remains.
3. If applicable, the name of the funeral director who sent the human remains and the name and license number of the funeral director's associated funeral establishment.
4. The signature of the person who delivered the human remains.
5. The signature of the person receiving the human remains on behalf of the cremation establishment.
6. The name and business address of the cremation establishment.

(2) The cremation establishment will retain a copy of the delivery receipt in its permanent records.

b. Receiving receipt.

(1) The cremation establishment will furnish to any person who receives the cremated remains from the cremation establishment a receiving receipt containing:

1. The name of the decedent whose cremated remains are released from the cremation establishment.
2. The date and time when the cremated remains were released from the cremation establishment.
3. The name of the person to whom the cremated remains are released and the name and license number of the funeral establishment, cemetery, family or other person or entity with which that person is affiliated.
4. The signature of the person who receives the cremated remains.
5. The signature of the person who released the cremated remains on behalf of the cremation establishment.
6. The name of the cremation establishment operator and the date and time of the cremation.

(2) The cremation establishment will retain a copy of the receiving receipt in its permanent records.

c. Permanent record. A cremation establishment will maintain at its place of business a permanent record that includes the following:

- (1) Name of the deceased person.
- (2) Date and time of the cremation.
- (3) Copies of the delivery receipt and the receiving receipt.
- (4) Disposition of the cremated remains.
- (5) Cremation authorization.
- (6) Cremation permit if required in the jurisdiction of death.

100.10(2) Employment of a funeral director by a cremation establishment. No aspect of these rules will be construed to require a funeral director to supervise or perform any functions at a cremation establishment not otherwise required by law to be performed by a funeral director. The cremation establishment will contract only with a licensed funeral establishment and will not contract directly with the general public.

100.10(3) Authorizing person and preneed cremation arrangements. The authorized person has legal authority and may make decisions regarding the final disposition of the decedent.

100.10(4) Authorization to cremate.

a. The cremation establishment will have the authority to cremate human remains upon the receipt of the following:

(1) Cremation authorization form signed by the authorized person. The cremation authorization form will contain the following:

1. The name, address, age and gender of the decedent whose human remains are to be cremated.
 2. The date, time of death and cause of death of the decedent.
 3. The name and license number of the funeral establishment and of the funeral director who obtained the cremation authorization form signed by the authorized person.
 4. The signature of the funeral director.
 5. The name and address of the cremation establishment authorized to cremate a human remains.
 6. The name and signature of the authorized person granting permission to cremate the human remains and the authorized person's relationship to the decedent.
 7. A representation that the authorized person has the right to authorize the cremation of the decedent in accordance with this rule.
 8. A representation that in the event there is another person who has superior priority right to that of the authorized person, the authorized person has made all reasonable efforts to contact that person and has no reason to believe that the person would object to the cremation of the decedent.
 9. A representation that a human remains does not contain any material or implants that may be potentially hazardous to equipment or persons performing the cremation.
 10. A representation that the authorized person has made a positive identification of the decedent or, if the authorized person is unavailable or declines, there are alternative means of positive identification.
 11. The name of the person, funeral establishment or funeral establishment's designee to which the cremated remains are to be released.
 12. The manner of the final disposition of the cremated remains.
 13. A listing of all items of value and instructions for their disposition.
- (2) The cremation permit if required in the jurisdiction of death.
- (3) Any other documentation required by this state.

b. If the authorized person is not available to execute the cremation authorization form in person, the funeral director may accept written authorization by facsimile, email, or such alternative written or electronic means the funeral director reasonably believes to be reliable and credible.

c. The authorized person may revoke the authorization and instruct the funeral director or funeral establishment to cancel the cremation. The cremation establishment will honor any instructions from a funeral director or funeral establishment under this rule if the cremation establishment receives instructions prior to beginning the cremation.

100.10(5) Cremation procedures.

a. A cremation establishment will cremate human remains within 24 hours of issuance of the delivery receipt as defined in subrule 100.10(1).

b. No cremation establishment will cremate human remains when it has actual knowledge that the human remains contain a pacemaker or have any other implants or materials which will present a health hazard to those performing the cremation and processing and pulverizing the cremated remains.

c. No cremation establishment will refuse to accept human remains for cremation because such human remains are not embalmed.

d. Whenever a cremation establishment is unable or unauthorized to cremate human remains immediately upon taking custody of the remains, the cremation establishment will place the human remains in a holding facility in accordance with the cremation establishment rules and regulations and within the parameters of rules 645—100.5(135,144) and 645—100.6(156).

e. No cremation establishment will accept human remains unless they are delivered to the cremation establishment in a container which prevents the leakage of body fluids.

f. Under no circumstances will an alternative container or casket be opened at the cremation establishment except to facilitate proper cremation.

g. The container in which a human remains is delivered to the cremation establishment will be cremated with the human remains or safely destroyed.

h. The simultaneous cremation of the human remains of more than one person within the same cremation chamber, without the prior written consent of the authorized person, is prohibited. Nothing in this rule, however, will prevent the simultaneous cremation within the same cremation chamber of body parts delivered to the cremation establishment from multiple sources, or the use of cremation equipment that contains more than one cremation chamber.

i. No unauthorized person will be permitted in the holding facility or cremation room while any human remains are being held there awaiting cremation, being cremated, or being removed from the cremation chamber.

j. A cremation establishment will not allow removal of any dental gold, body parts, organs, or any item of value prior to or subsequent to a cremation without previously having received specific written authorization from the authorized person and written instructions for the delivery of these items to the authorized person.

k. Upon the completion of each cremation, and insofar as is practicable, all of the recoverable residue of the cremation process will be removed from the cremation chamber.

l. If all of the recovered cremated remains will not fit within the receptacle that has been selected, the remainder of the cremated remains will be returned to the authorized person or this person's designee in a separate container. The cremation establishment will not return to an authorized person or this person's designee more or less cremated remains than were removed from the cremation chamber.

m. A cremation establishment will not knowingly represent to an authorized person or this person's designee that a temporary cremation container or urn contains the cremated remains of a specific decedent when it does not.

n. Cremated remains will be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

o. A cremation establishment will maintain an identification system that will ensure the identity of human remains in the cremation establishment's possession throughout all phases of the cremation process. A noncombustible tag or disc that includes the name and license number of the cremation establishment and the city and state where the cremation establishment is located will be attached to the plastic bag with the cremated remains or placed in amongst the cremated remains.

100.10(6) *Disposition of cremated remains.* If responsible, the funeral director will supervise the final disposition of the cremated remains as follows:

a. Cremated remains may be disposed of by placing them in a grave, crypt, or niche or by scattering them in a scattering area as defined in these rules, or they may remain in the personal care and custody of the authorized person. After supervising the transfer of cremated remains to the authorized person or place of final disposition, the funeral director will be discharged.

b. Upon the completion of the cremation process, the cremation establishment will release the cremated remains to the funeral establishment or the authorized person or the authorized person's designee. Upon the receipt of the cremated remains, the individual receiving them may transport them in any manner in this state without a burial transit permit and may dispose of them in accordance with this rule. After releasing the cremated remains, the cremation establishment will be discharged from any legal obligation or liability concerning the cremated remains.

c. If, after a period of 60 days from the date of the cremation, the authorizing person or designee has not instructed the funeral director to arrange for the final disposition of the cremated remains, the funeral director may dispose of the cremated remains in any manner permitted by this rule. The funeral establishment, however, will keep a permanent record identifying the site of final disposition. The authorizing person will be responsible for reimbursing the funeral establishment for all reasonable expenses incurred in disposing of the cremated remains. Any entity that was in possession of cremated remains prior to the effective date of these rules may dispose of them in accordance with this rule.

d. Except with the express written permission of the authorizing person, no funeral director or cremation establishment will:

(1) Dispose of cremated remains in a manner or in a location so that the cremated remains are commingled with those of another person. This prohibition will not apply to the scattering of cremated remains in an area located in a cemetery and used exclusively for those purposes.

(2) Place cremated remains of more than one person in the same temporary cremation container or urn.

100.10(7) Scope of rules. These rules will be construed and interpreted as a comprehensive cremation statute, and the provisions of these rules will take precedence over any existing laws containing provisions applicable to cremation, but that do not specifically or comprehensively address cremation.

645—100.11(156) Records to be retained by a funeral establishment. To ensure a permanent record of the licensed activity relating to the custody of each decedent, each funeral director will create and the funeral establishment will maintain the records identified in this rule. Funeral directors and funeral establishments will comply with the rules adopted by the department of health and human services under Iowa Code section 144.49.

100.11(1) At a minimum, the following information, if applicable, relating to each human remains which enters the custody of the establishment/licensee will be maintained as the permanent record of licensed activity:

- a. Name of the deceased;
- b. Date, time, and place of death (institution or other place, city, state, zip);
- c. Name and address of the person or funeral establishment to whom a human remains is released;
- d. Date and from whom the funeral director assumed custody, including the name of the institution or other place of death releasing a human remains;
- e. Date, time, and name of the licensed funeral director or registered intern completing embalming or other preparation for final disposition;
- f. Date, place and method of final disposition of a human remains.

100.11(2) Each funeral establishment will create and maintain the following records for a period of ten years:

- a. General price list required by the funeral rule, beginning on the most recent effective date;
- b. Each completed statement of goods and services required by the funeral rule, beginning on the date the statement is signed;
- c. Cremation records (see rule 645—100.10(156));
- d. Embalming records;
- e. Each preneed contract (pursuant to Iowa Code chapter 523A), beginning on the date of death.

100.11(3) The funeral records maintained by the funeral establishment as required in subrules 100.11(1) and 100.11(2) will be made available by the manager, funeral director or owner of the funeral establishment to:

- a. Any person or entity assuming a new ownership interest or any person newly assuming the position of manager, at least ten days prior to a change in ownership or manager, unless otherwise mutually agreed upon by the parties;
- b. Any licensed funeral director who practiced funeral directing while under the employment of, or while acting as an agent of, the funeral establishment; and
- c. The state registrar of vital statistics and the board.

100.11(4) In the event a funeral establishment ceases to do business, the owner or manager of the funeral establishment will identify the person or entity which will be responsible for records to be maintained by a funeral establishment as required in subrules 100.11(1) and 100.11(2). The funeral establishment will notify the board if funeral records are moved from the funeral establishment to another location and identify the person responsible for their safekeeping.

These rules are intended to implement Iowa Code chapters 147, 156, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 101
“Licensure of Funeral Directors, Funeral Establishments, and Cremation Establishments”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 156, 147, 272C, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 156

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:30 p.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

Proposed Chapter 101 sets minimum standards for licensure as a funeral director and establishments in Iowa. Iowa residents, licensees, and employers benefit from the chapter because it articulates the processes by which individuals apply for licensure, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the public or establishment doing business with the public has minimum competency. Requirements include the application process, minimum educational qualifications and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no direct costs imposed on the public to comply with the chapter; however, there is a cost to the applicant to meet the requirements of statute and rules. The application fee for a funeral director’s license is \$120, and the biannual renewal fee is \$120. Applicants for licensure must complete 60 hours of non-mortuary science hours and successfully pass the certifying examination conducted by The International Conference of Funeral Service Examining Boards; the fee for this examination is \$570. These costs are comparable to surrounding states’ licensing fees for a funeral director. Nebraska’s application fee is \$90; Minnesota’s application fee is \$200.

The licensee would also have costs related to educational requirements and examination requirements. The Board has not identified an exact cost of education for this field since it varies depending on the school the licensee chooses to attend to meet those requirements.

Costs incurred by the agency are staff time to manage the full scope of Board activities, which includes oversight of practice standards, triaging questions from licensees and the public, monitoring interns, and administering Board meetings. An executive officer supports the work of the Board at approximately 0.29 full-time equivalent (FTE) position. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this chapter. The chapter provides standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing they are receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide academic training for funeral directors to obtain their license in Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. Because the cost of education is so variable depending on the institution the person attends, the Board is unable to put an exact cost on the cost of education or examination preparation.

Licensing fees for a funeral director is \$120 for an initial license and \$120 for each biannual renewal period; initial license for a funeral or cremation establishment is \$90 and \$90 for each triennial renewal period.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs incurred by the agency are staff time to manage the full scope of Board activities, which includes oversight of practice standards, triaging questions from licensees and the public, monitoring interns, and administering Board meetings. An executive officer supports the work of the Board at approximately 0.29 FTE position. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Almost every person at some point will purchase or consume a funeral-related product or service. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could have adverse effects on consumers who are making expensive decisions in stressful circumstances. The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowa consumers are protected.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

On a national level, there is a wide variety of alternatives to licensure. The state of Colorado registers the establishment as opposed to the individual. Arkansas does not require a funeral director to obtain college credits as long as the funeral director completes an apprenticeship and passes the national examination. The Board is committed to requiring licensure of funeral directors and establishments to ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession; however, the Board would be concerned about the public safety of Iowans in that scenario.

Due to state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession; however, the Board would be concerned about the public safety of Iowans in that scenario.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession; however, the Board would be concerned about the public safety of Iowans in that scenario.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for funeral directors and establishments. While some funeral directors may work in an independently owned establishment, others may work for multiple establishments owned by the same firm. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 101 and adopt the following new chapter in lieu thereof:

CHAPTER 101
LICENSURE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND
CREMATION ESTABLISHMENTS

645—101.1(156) Definitions. For purposes of these rules, the following definitions will apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of mortuary science.

“*Change of ownership*” means a change of controlling interest ((1) an interest in a partnership of greater than 50 percent; or (2) greater than 50 percent of the issued and outstanding shares of a stock of a corporation) in a funeral establishment or cremation establishment.

“*Full time*” means a minimum of a 35-hour work 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 include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as a funeral director in the state of Iowa.

“*License expiration date*” means the fifteenth day of the birth month every two years following initial licensure.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice mortuary science to an applicant who is or has been licensed in another state.

“*Outer burial container*” means any container which is designed for placement in the ground around a casket or an urn including, but not limited to, containers commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—101.11(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice mortuary science to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of mortuary science to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who 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.

645—101.2(156) Requirements for licensure.

101.2(1) The applicant will be eligible to apply for a license to practice mortuary science by the board pursuant to subrule 101.2(2) when the applicant has completed the educational requirements and examination requirements, followed by a completed internship as prescribed below, in the following alphabetical order:

a. Educational qualifications.

(1) A minimum of 60 hours of college credit as indicated on the transcript from a regionally accredited college or university with a minimum of a 2.0 or “C” grade point average. The 60 college semester hours will not include any technical mortuary science course; and

(2) A program in mortuary science from a school accredited by the American Board of Funeral Service Education; and

(3) A college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including, but not limited to, Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed services.

b. Examination requirements. The board will accept a certificate of examination issued by the International Conference of Funeral Service Examining Boards, Inc., indicating a passing score on both the arts and sciences portions of the examination.

c. Internship requirements as outlined in rule 645—101.3(147,156).

101.2(2) The applicant will complete an online application packet on the Iowa board of mortuary science website and pay the nonrefundable application fee.

a. If licensed in another jurisdiction, the applicant will complete the licensure by endorsement application. Submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed.

b. An application that is not completed according to guidelines will not be reviewed by the board.

c. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

d. An application will not be considered until official copies of the academic transcripts has been directly transmitted from the college to the board office that demonstrates the applicant has completed a program at an approved college of mortuary science.

e. Licensees who were issued their initial licenses within six months prior to the renewal will not be required to renew their licenses until the renewal month two years later.

f. Incomplete applications that have been on file in the board office for more than two years will be:

(1) Considered invalid and will be destroyed; or

(2) Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

101.2(3) Foreign-trained funeral directors will:

a. Provide an equivalency evaluation of their educational credentials by International Educational Research Foundation, Inc. The professional curriculum must be equivalent to that stated in these rules. A candidate will bear the expense of the curriculum evaluation.

b. Provide a copy of the certificate or diploma awarded to the applicant from a mortuary science program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

d. Successfully complete a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including, but not limited to, Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

645—101.3(147,156) Internship and preceptorship.

101.3(1) *Internship.*

a. The intern must serve a minimum of one year of internship under the direct supervision of an Iowa board-certified preceptor. The beginning and ending dates of the internship will be indicated on the internship certificate. The intern will engage in the practice of mortuary science only during the time indicated on the internship certificate.

b. The intern will, during the internship, be a full-time employee with the funeral establishment at the site of internship except as provided in paragraph 101.3(2)“i.”

c. No licensed funeral director will permit any person in the funeral director’s employ or under the funeral director’s supervision or control to serve an internship in funeral directing unless that person has a certificate of registration as a registered intern from the department of public health. The registration will be posted in a conspicuous place in the intern’s primary place of practice.

d. Registered interns will not advertise or hold themselves out as funeral directors or use the degree F.D. or any other title or abbreviation indicating that the intern is a funeral director.

e. The intern will, during the internship, complete the requirements outlined in subrule 101.3(3), including to embalm not fewer than 25 human remains and direct or assist in the direction of not fewer than 25 funerals under the direct supervision of the certified preceptor and to submit reports on forms furnished by the department of public health. Work on the first 5 embalming cases, first 5 funeral arrangements, and first 5 funeral or memorial services must be completed in the physical presence of the preceptor. The first 12 embalming cases and the first 12 funeral case reports must be completed and submitted by the completion of the sixth month of the internship.

f. Before being eligible for licensure, the intern must have filed the 25 completed embalming and funeral directing case reports and a 6-month and a 12-month evaluation form with the department of public health. These reports will be answered in full and signed by both the intern and preceptor.

g. When, for any valid reason, the board determines that the education a registered intern is receiving under the supervision of the present preceptor might be detrimental to the intern or the profession at large, the intern may be required to serve the remainder of the internship under the supervision of a licensed funeral director who is approved by the board.

h. The length of an internship may be extended if the board determines that the intern requires additional time or supervision in order to meet the minimum proficiency in the practice of mortuary science.

i. The board views a one-year internship completed in a consecutive 12-month period as the best training option. If an internship is interrupted, the internship must be completed within 24 months of the date it started in order to be readily accepted by the board. Internships that are not completed within 24 months will be preapproved by the board on such terms as the board deems reasonable under the circumstances. The board may require any or all of the following:

(1) Completion of a college course or continuing education course covering mortuary science laws and rules;

(2) Additional case reports;

(3) Extension of an internship up to an additional 12 months depending on such factors as the number of months completed during the internship, length of time that has lapsed since the intern was actively involved in the internship program, and the experience attained by the intern.

j. Application for change of preceptor or any other alteration must be made in writing and approval granted by the board before the status of the intern is altered.

k. The intern will complete on a form provided by the board a confidential evaluation of the preceptorship program at the end of the internship. This form will be submitted before a funeral director license is issued to the intern.

l. The intern must be approved and licensed following a successful internship before the intern may practice mortuary science.

101.3(2) Preceptorship.

a. A preceptor must have completed a training course within five years prior to accepting an intern. This training course will cover Iowa law and rule content areas including, but not limited to, Iowa law and rules governing licensure and the practice of mortuary science and human resource issues. The training course may be counted toward the continuing education hours required for the licensure biennium in which the training course was completed.

b. Any duly Iowa-licensed funeral director who has been practicing for a minimum of five years and who has not had any formal disciplinary action within the past five years with the board of mortuary science and has completed a preceptor training course detailed in paragraph 101.3(2)“*a*” will be eligible to be a preceptor.

c. The preceptor will be affiliated with a funeral establishment that has not had any formal disciplinary action within the past five years.

d. The preceptor will certify that the intern engages in the practice of mortuary science only during the time frame designated on the official intern certificate.

e. A preceptor’s duties will include the following:

(1) Ensure the intern completes the training program outlined in subrule 101.3(3);

(2) Be physically present and supervise the first five embalming cases, first five funeral arrangements, and first five funeral or memorial services;

(3) Familiarize the intern in the areas specified by the preceptor training outline;

(4) Read, add appropriate comments to, and sign each of the 25 embalming reports and the 25 funeral directing reports completed by the intern;

(5) Complete a written six-month report of the intern on a form provided by the board. This report is to be reviewed with and signed by the intern and submitted to the board before the end of the seventh month; and

(6) At the end of the internship, complete a confidential evaluation of the intern on a form provided by the board. This evaluation will be submitted within two weeks of the end of the internship. The 12-month report will be submitted to the board for review and approval prior to the board's approval of the intern for licensure.

f. Failure of a preceptor to fulfill the requirements set forth by the board, including failure to remit the required six-month progress report, as well as the final evaluation, will result in an investigation of the preceptor by the board and may result in actions which may include, but not be limited to, the loss of preceptor status for current and future interns or discipline or both.

g. If a preceptor does not serve the entire year, the board will evaluate the situation; and if a certified preceptor is not available, a licensed funeral director may serve with the approval of the board.

h. No licensed funeral director or licensed funeral establishment will have more than one intern funeral director for the first 100 human remains embalmed or funerals conducted per year, and with a maximum of two interns per funeral establishment.

i. With prior board approval, an intern may serve under the supervision of more than one preceptor under the following terms and conditions:

(1) A single preceptor must act in the role of the primary preceptor.

(2) The primary preceptor is responsible for coordinating all intern training and activities.

(3) The intern will be a full-time employee of the funeral establishment of the primary preceptor; however, compensation may be shared between preceptors.

(4) The primary preceptor may make arrangements with a maximum of two additional preceptors to share preceptor responsibilities for such purposes as providing an intern with a higher-volume practice or a broader range of intern experiences.

(5) Each preceptor will be individually responsible for directly supervising the intern's activities performed under the preceptor's guidance, but the primary preceptor remains responsible for coordinating the intern's activities and submitting all forms to the board.

101.3(3) Intern training requirements.

a. The board-approved preceptor will ensure that the intern is knowledgeable of each of the following items during the internship:

(1) The requirements of the Federal Trade Commission Funeral Rule.

(2) The requirements of the Occupational Safety and Health Act.

(3) The requirements of the Americans with Disabilities Act.

(4) The benefits of the Social Security and Veterans Health Administrations.

(5) The requirements of Iowa funeral law and forms (for example, preneed in Iowa Code chapter 523A, death certificates and Iowa burial transit permits in Iowa Code chapter 144, authorized person in Iowa Code chapter 144C, Iowa department of public health's law and rules governing funeral practice, and the board's laws and rules).

b. The board-approved preceptor will ensure that the intern performs each of the following under the preceptor's direct supervision:

(1) Assists with or performs a minimum of 10 transfers of human remains.

(2) Performs 25 embalming of human remains to include:

1. Obtaining permission to embalm.

2. Placement of human remains on preparation table.

3. Pre-embalming analysis.

4. Primary disinfection.

5. Setting features.
6. Selection of injection/drainage sites and raising those vessels.
7. Selection and mixing of embalming chemicals and operation of the embalming machine.
8. Injection and drainage methods.
9. Cavity treatment.
10. Suturing techniques.
- (3) Prepares a minimum of 10 human remains for viewing to include:
 1. Dressing.
 2. Cosmetizing.
 3. Casketing.
- (4) Assists with cremation procedures to include:
 1. Contacting the medical examiner.
 2. Completing required cremation forms.
 3. Preparing human remains for cremation.
- (5) Makes complete funeral arrangements with a minimum of 10 families to include each of the following, as applicable:
 1. Presentation of funeral goods, products and services.
 2. Presentation of payment options for families.
 3. Contacting third-party suppliers of goods and services, such as clergy, cemetery personnel, outer burial container provider, cremation establishment, florist, and musicians.
 4. Completing the obituary.
 5. Presentation of general price list and associated price lists.
 6. Preparation and presentation of statement of funeral goods and services.
- (6) Coordinates, at a minimum, 10 visitations to include:
 1. Preparing the chapel, visitation room or other facility.
 2. Setting up floral arrangements.
 3. Setting up register book and memorial folders or prayer cards.
- (7) Directs a minimum of 25 funerals or memorial services to include, as applicable:
 1. Greeting funeral attendees.
 2. Assisting casket bearers.
 3. Preparing for funeral procession.
 4. Driving a vehicle in procession.
 5. Assisting at graveside committal.
 6. Transporting flowers.
 7. Coordinating with officiant and family.

645—101.4(156) Student practicum.

101.4(1) A student may participate in a student practicum in a licensed funeral establishment in Iowa if the student's school is accredited by and in good standing with the American Board of Funeral Service Education (ABFSE). The student practicum must meet the requirements of the ABFSE.

101.4(2) Students serving a practicum in Iowa will be under the direct physical supervision of a funeral director who meets the following requirements:

- a. Has completed the Iowa preceptor training course within the immediately preceding five years.
- b. Has not had any formal disciplinary action within the past five years.
- c. Is affiliated with a funeral establishment that has not had formal disciplinary action within the past five years.

645—101.5(156) Funeral establishment license or cremation establishment license.

101.5(1) A place of business devoted to providing any aspect of mortuary science or cremation services will hold an establishment license issued by the board. An establishment license will not be issued more than 30 days prior to the opening of a new establishment.

- a.* A funeral establishment or a cremation establishment will not be operated until it has obtained a license from the board. Each establishment will timely renew the license in order to continue operations.
- b.* A funeral or cremation establishment will surrender its license to the board if the establishment fails to engage in or ceases to engage in the business for which the license was issued, pursuant to Iowa Code section 156.15(2)“*d.*”
- c.* A funeral or cremation establishment license is not transferable or assignable.
- d.* A change in ownership will require the issuance of a new license. A change in ownership will be reported to the board prior to the date ownership will change or, in the case of change of ownership by death or other unexpected event, within 30 days following change of ownership. The board may request legal proof of the ownership transfer.
- e.* An establishment license will be issued for a specific physical location. A change in location or site of an establishment will require the submission of an application for a new license and payment of the fee required by 645—subrule 5.9(9). A new establishment license must be issued prior to the commencement of business in a new location.
- f.* A change in the name of an establishment will be reported to the board within 30 days. The establishment owner will pay the fee for reissuing the license.
- g.* A change in address or of the funeral director in responsible charge will be reported to the board within 30 days.
- h.* An establishment will have an employment or other relationship with one or more licensed funeral directors who will perform all mortuary science services for which licensure as a funeral director is required by Iowa Code chapter 156. A cremation establishment is not, however, required to employ or contract with a funeral director on an ongoing basis because a cremation establishment will not offer services directly to the general public. When a funeral establishment has an employment or other relationship with multiple funeral directors, the funeral establishment will designate the funeral director who will be in responsible charge of all mortuary science services performed at the funeral establishment. The funeral establishment will report to the board any change of the funeral director in responsible charge within 30 days of the change.
- i.* The board will not routinely issue more than one establishment license for a single location, but the board may do so if the multiple applicants provide proof, satisfactory to the board, that the establishments are wholly separate except for the sharing of facilities. If the board issues more than one establishment license for a single location, the licensees will ensure that the public will not be confused or deceived as to the establishment with which the public is interacting. A facility may have a funeral establishment license and a separate cremation establishment license at a single location.
- j.* The establishment license will be displayed in a conspicuous place at the location of the establishment.
- k.* Failure to comply with any of these rules will constitute grounds for discipline pursuant to 645—Chapter 104 or civil penalties for unlicensed practice pursuant to 645—Chapter 105.

101.5(2) A funeral establishment or cremation establishment will be subject to applicable local, state and federal health and environmental requirements and will obtain all necessary licenses and permits from the agencies with jurisdiction.

101.5(3) License application. Complete an online application on the Iowa board of mortuary science website and pay the nonrefundable funeral or cremation application fee. If there is both a funeral establishment and a cremation establishment at the same location, two establishment license applications will be required, along with the payment of two establishment application fees. The application will contain all of the following:

- a.* The name, mailing address and telephone number of the applicant.
- b.* The physical location of the establishment.
- c.* The mailing address, telephone number, fax number and email address of the establishment.
- d.* The name, home address and telephone number of the individual in charge who has the authority and responsibility for the establishment’s compliance with laws and rules pertaining to the operation of the establishment.

- e.* The name and address of all owners and managers of the establishment (e.g., sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock).
- f.* The legal name of the establishment and all trade names, assumed names, or other names used by the establishment.
- g.* The signature of the responsible authority at the site of the establishment and an acknowledgment of the funeral director in responsible charge of mortuary science services at the funeral establishment that the funeral director is aware of and consents to the designation.
- h.* The names and license numbers of all funeral directors employed by or associated with the establishment through contract or otherwise who provide mortuary science services at or for the establishment. When a funeral establishment has an employment or other relationship with multiple funeral directors, the funeral establishment will designate the funeral director who will have responsible charge of all mortuary science services performed at the funeral establishment. No funeral establishment will be issued a license if it fails to designate the funeral director in responsible charge of the mortuary science services to be performed at the establishment.
- i.* All felony or misdemeanor convictions of the applicant and all owners and managing officers of the applicant (except minor traffic offenses with fines of less than \$500).
- j.* All disciplinary actions against any professional or occupational license of the applicant by any jurisdiction including, but not limited to, disciplinary action by the Iowa insurance division under Iowa Code chapter 523A or 523I, or action by the Federal Trade Commission.
- k.* Further information that the board may reasonably require, such as whether the establishment includes a preparation room.

645—101.6(156) Renewal of funeral director license.

101.6(1) The biennial license renewal period for a license to practice as a funeral director will begin on the sixteenth day of the licensee's birth month and end on the fifteenth day of the licensee's birth month two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

101.6(2) 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 date two years later. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The licensee will be required to complete a minimum of 24 hours of continuing education per biennium for each subsequent license renewal, with 2 of the 24 hours covering current Iowa law and rules as identified in 645—paragraph 102.3(2)“f.”

101.6(3) A licensee seeking renewal will:

- a.* Meet the continuing education requirements of rule 645—102.2(272C). 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.* Complete an online renewal application on the board of mortuary science website and pay the renewal fee before the license expiration date.
- c.* Persons licensed to practice funeral directing will keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

101.6(4) Upon receiving the information required by this rule and the required fee, board staff will administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

101.6(5) A person licensed to practice as a funeral director will keep the license certificate displayed in a conspicuous public place at the primary site of practice.

101.6(6) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.14(4). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

101.6(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a funeral director in Iowa until the license is reactivated. A licensee who practices as a funeral director in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—101.7(272C) Renewal of a funeral establishment license or a cremation establishment license.

101.7(1) Renewal.

- a. The renewal cycle will be triennial beginning July 1 and ending on June 30 of the third year.
- b. The renewal will be to complete an online renewal application on the Iowa board of mortuary science website and pay the renewal fee.

101.7(2) Failure to receive notice from the board will not relieve the license holder of the obligation to pay triennial renewal fees on or before the renewal date.

101.7(3) Funeral and cremation establishments will keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

101.7(4) Late renewal. If the renewal fee and renewal application are received within 30 days after the license renewal expiration date, the late fee for failure to renew before expiration will be charged.

101.7(5) When all requirements for license renewal are met, the licensee will be sent a license renewal card by email.

645—101.8(272C) Inactive funeral establishment license or cremation establishment license.

101.8(1) If the renewal application and fee are not postmarked within 30 days after the license expiration date, the funeral establishment license or cremation establishment license is inactive. To reactivate a funeral establishment license or cremation establishment license, complete an online reactivation application on the Iowa board of mortuary science website and pay the reactivation fee.

101.8(2) A funeral establishment or a cremation establishment that has not renewed the funeral establishment license or cremation establishment license within the required time frame will have an inactive license and will not provide mortuary science services until the license is reactivated.

645—101.9(17A,147,272C) Reinstatement of a funeral establishment license or a cremation establishment license. For a funeral or cremation establishment license that has been revoked, suspended, or voluntarily surrendered, the owner must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—101.9(272C) prior to offering mortuary science services from that establishment in this state.

645—101.10(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee will:

101.10(1) Complete an online reactivation application on the Iowa board of mortuary science website and pay the reactivation fee.

101.10(2) Provide verification of current competence to practice as a funeral director by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) If licensed in another jurisdiction, the applicant will submit a licensure verification document from every jurisdiction the applicant is or has been licensed that discloses if disciplinary action was taken.

(2) Verification of completion of 24 hours of continuing education that meet continuing education standards defined in rule 645—102.3(156,272C) within two years prior to filing the application for reactivation; and

(3) Verification of completion of 2 hours of continuing education in current Iowa law and rules covering mortuary science content areas including, but not limited to, Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. These 2 hours will be included as a part of the 24 hours required in subparagraph 101.11(3)“a”(2).

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) If licensed in another jurisdiction, the applicant will submit a licensure verification document from every jurisdiction the applicant is or has been licensed that discloses if disciplinary action was taken.

(2) Verification of completion of 48 hours of continuing education that meet continuing education standards defined in 645—subrule 102.3(1) and 645—paragraphs 102.3(2)“a,” “b,” “c,” and “e,” within two years prior to filing the application for reactivation. Independent study identified in 645—paragraph 102.3(2)“f” will not exceed 24 hours of the 48 hours; and

(3) Verification of completion of a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

645—101.11(17A,147,272C) Reinstatement of a funeral director license. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—101.11(17A,147,272C) prior to practicing as a funeral director in this state. The owner of a funeral home establishment whose establishment license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the establishment license and must apply for and be granted reactivation of the establishment license prior to reopening the funeral home establishment.

These rules are intended to implement Iowa Code chapters 17A, 147, 156 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 102
“Continuing Education for Funeral Directors”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 156, 147.36, and 147.76
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 156, 17A, 147, and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:30 p.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

Proposed Chapter 102 sets forth continuing education requirements for funeral directors. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to maintain and improve a licensee’s knowledge and skills to improve the safety and welfare delivered to the public.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Board of Mortuary Science is not privy to exact costs. Based on research, the Board estimates a bundle online course would cost approximately \$50 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that funeral directors are obtaining and maintaining a sufficient level of ongoing education in the profession to provide high-quality services to Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offers continuing education courses. The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires funeral directors to obtain 24 hours of continuing education every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.29 full-time equivalent (FTE) position, which includes questions from the public and licensees such as practice standards, continuing education, board meeting administration, etc.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board discussed reducing the number of continuing education hours at its September board meeting. It was the Board's conclusion to maintain the current 24 hours of continuing education because it was not considered burdensome since the rules allow completion of those hours online. The Board also opined that the number of continuing education hours is relevant to maintain its professional development on topics such as traumatic situations, mental health and social issues that may be confronted on regular basis.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce the amount of continuing education required. The Board was not in consensus to reduce the number of continuing education hours but to maintain its current standards. The following are the continuing education unit (CEU) requirements from surrounding states:

South Dakota: no CEU requirements.

Kansas: 12 CEUs every two years.

Nebraska: 12 CEUs every two years.

Minnesota: 15 CEUs every two years.

Wisconsin: 15 CEUs every two years.

Illinois: 24 CEUs every two years.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board discussed reducing continuing education hours but was in consensus to maintain the current number of continuing education hours.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board discussed reducing continuing education hours but was in consensus to maintain the current number of continuing education hours.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The Board discussed reducing continuing education hours but was in consensus to maintain the current number of continuing education hours.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 102 and adopt the following new chapter in lieu thereof:

CHAPTER 102 CONTINUING EDUCATION FOR FUNERAL DIRECTORS

645—102.1(272C) Definitions. For the purpose of these rules, the following definitions will apply:

“Active license” means a license that is current and has not expired.

“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 mortuary science.

“Continuing education” means planned, organized learning acts that are 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 and that meet the standards set forth in these rules.

“Hour of continuing education” means at least 50 minutes spent by a licensee in actual attendance at and completion of continuing education.

“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.

“Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in these rules and includes a posttest.

“License” means license to practice.

“Licensee” means any person licensed to practice as a funeral director in the state of Iowa.

645—102.2(272C) Continuing education requirements.

102.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on the fifteenth day of the licensee's birth month and ending on the fifteenth day of the licensee's birth month. Each biennium, a person who holds an active license will be required to

complete a minimum of 24 hours of continuing education activity. Two of the 24 hours of continuing education will be in current Iowa law and rules covering mortuary science content areas including, but not limited to, Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. A minimum of 12 hours of the 24 hours of continuing education required for renewal will be earned by completing a program in which an instructor conducts the class employing either in-person or live, real-time interactive media.

102.2(2) Requirements of new licensees. Continuing education is not required in the first renewal period. 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 24 hours of continuing education per biennium for each subsequent license renewal.

102.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity as stipulated in rule.

102.2(4) No hours of continuing education will be carried over into the next biennium except as stated in subrule 102.2(2). A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

102.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—102.3(156,272C) Standards.

102.3(1) *General criteria.* A continuing education activity must meet the following criteria:

- a. Constitute an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertain to subject matters which integrally relate to the practice of the profession;
- c. Be conducted by individuals who have specialized education, training and experience concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters.
- d. Fulfill stated program goals, objectives, or both; and
- e. Provide proof of attendance to licensees in attendance including:
 - (1) Date(s), location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

All licensees must retain the information identified in paragraph 102.3(1) “e” for two years after the biennium has ended.

102.3(2) *Specific criteria.*

- a. The following categories of continuing education are accepted:
 - (1) Public health and technical: chemistry, microbiology and public health, anatomy, pathology, restorative art, arterial and cavity embalming.
 - (2) Business management: accounting, funeral home and crematory management and merchandising, computer application, funeral directing, and small business management.
 - (3) Social sciences/humanities: psychology of grief, counseling, sociology of funeral service, history of funeral service, communication skills, and philosophy.
 - (4) Legal, ethical, regulatory: mortuary law; business law; ethics; Federal Trade Commission, OSHA, ADA, and EPA regulations; preneed regulation; social services; veterans affairs benefits; insurance; state and county benefits; legislative concerns. Insurance will be related to life insurance and will not exceed 8 hours each biennium.

b. Academic coursework that meets the criteria set forth in the rule is accepted. Continuing education credit equivalents are as follows:

- 1 academic semester hour = 10 continuing education hours
- 1 academic trimester hour = 8 continuing education hours
- 1 academic quarter hour = 7 continuing education hours

A course description and an official school transcript indicating successful completion of the course must be provided by the licensee to receive credit for an academic course if continuing education is audited.

c. Attendance at or participation in a program or course which is offered or sponsored by a state or national funeral association that meets the criteria in subrule 102.3(1) and paragraph 102.3(2)“*a*” is accepted.

d. Independent study credits, including those obtained by television viewing, Internet, video- or sound-recorded programs, or correspondence work or by other similar means that meet the criteria in paragraph 102.3(2)“*a*,” must be accompanied by a certificate from the sponsoring organization that indicates successful completion of the test. Continuing education credit obtained by independent study will not exceed 12 hours of the 24 hours required during the compliance period.

e. Presentations of a structured continuing education program or a college course that meets the criteria established in standards for approval may receive 1.5 times the number of hours granted the attendees. These hours will be granted only once per biennium for identical presentations.

f. Two of the 24 hours of continuing education will be in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

645—102.4(83GA,SF2325) Automatic exemption. A licensee will be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Was a government employee working in the licensee’s specialty and assigned to duty outside the United States; or
3. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

These rules are intended to implement Iowa Code section 272C.2 and chapter 156.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapters 103 and 104
“Disciplinary Proceedings”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 156, 147.36, and 147.76
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 156, 17A, 147, and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:30 p.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

Proposed Chapter 104 provides protection to Iowans because it publicly defines required professional standards for the practice of mortuary science. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in Iowa. When professional standards are not met, it can subject a licensee to discipline against a license. Iowans have the ability to submit a complaint to the Board of Mortuary Science, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected. This can include restrictions, suspension, or revocation of a license to practice. The chapter also creates a process to place a licensee on probation for the purpose of protecting the public who rely upon these licensed individuals and establishments for the performance of mortuary science services.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. Chapter 104 contains only those disciplinary grounds that are unique to the mortuary sciences profession and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. This chapter is related to standard of practice, so there would be a cost to the practitioner to meet the standard of prevailing practices. The Board is unable to assess a cost related to this specific requirement. Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.29 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc. The Board has opened and investigated just 35 complaints since 2021. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this chapter is to ensure public health and maintain the dignity of the deceased. In total, the Board licenses 876 funeral directors, 510 funeral establishments, and 73 crematories. Since 2021, the Board has opened and investigated just 35 complaints. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the Board believes regulation is necessary to provide consumer protection during all aspects of the funeral process.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of funeral directing and owning a funeral establishment requires licensees to understand their professional obligations. There is a potential cost to licensees where disciplinary action is taken against them, with disciplinary fines being capped at \$1,000 per public order.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer protection. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this board at approximately 0.29 FTE position. Due to the low number of complaints associated with this board, costs specific to managing complaints and investigations are minimal.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$0 was paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are only a small number of complaints submitted, costs of this rule are extremely low. The Board believes that the benefits achieved justify the low cost because funeral directors and establishments are providing services to consumers. The Board receives a low number of complaints and issues a small number of disciplinary actions. From 2021, the Board opened and investigated 35 complaints involving the standard of care. This profession requires a high level of competency and practice standards. This chapter creates a process for holding accountable those licensees who fail to meet the minimum standards articulated in rule and statute. While a low number of complaints can call into question the extent to which a profession needs to be regulated, funeral directors and establishments are providing services to the public that requires safety and consumer protection, so the Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent and safe practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. This chapter was retained in its entirety because it contains disciplinary grounds that are unique to funeral directors and establishments and are excluded from the general disciplinary chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. This chapter was retained in its entirety because it contains only those disciplinary grounds that are unique to funeral directors and establishments and are excluded from the general disciplinary chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

No answer provided.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **645—Chapter 103**.

ITEM 2. Rescind 645—Chapter 104 and adopt the following **new** chapter in lieu thereof:

CHAPTER 104
DISCIPLINARY PROCEEDINGS

645—104.1(156) Definitions.

“*Board*” means the board of mortuary science.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means an individual licensed pursuant to Iowa Code section 156.4 to practice as a funeral director in Iowa and a person issued an establishment license pursuant to Iowa Code section 156.14 to establish, conduct, or maintain a funeral establishment or cremation establishment in Iowa.

645—104.2(17A,147,156,272C) Disciplinary authority. The board is empowered to administer Iowa Code chapters 17A, 147, 156, and 272C and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals and establishments for the performance of mortuary science services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, to determine whether disciplinary proceedings are warranted, to initiate and prosecute disciplinary proceedings, to establish standards of professional conduct, and to impose discipline pursuant to Iowa Code sections 17A.13, 147.55, 272C.3 to 272C.6 and 272C.10 and chapter 156.

645—104.3(17A,147,156,272C) Grounds for discipline against funeral directors. The board may initiate disciplinary action against a licensed funeral director based on Iowa Code section 156.9 and any of the following grounds:

104.3(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of inspections, appeals, and licensing any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

104.3(2) Professional incompetency. Professional 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 practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standards of acceptable and prevailing practice of a funeral director in this state.

104.3(3) Deceptive practices. Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information

or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

- c.* Acceptance of any fee by fraud or misrepresentation.
- d.* Falsification of business records through false or deceptive representations or omissions.
- e.* Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule.
- f.* Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.
- g.* Representing oneself as a funeral director when one's license has been suspended, revoked, or surrendered, or when one's license is on inactive status.
- h.* Permitting another person to use the licensee's license for any purposes.
- i.* Misrepresenting the legal need or other requirement for embalming.
- j.* Fraud in representations as to skill or ability.

104.3(4) Unethical, harmful or detrimental conduct. Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

- a.* Practice outside the scope of the profession which requires licensure by a different professional licensing board.
- b.* Any violation of Iowa Code chapter 144.
- c.* Verbal or physical abuse, improper sexual contact, or making suggestive, lewd, lascivious, offensive or improper remarks or advances, if such behavior occurs within the practice of mortuary science or such behavior otherwise provides a reasonable basis for the board to conclude that such behavior would place the public at risk within the practice of mortuary science.
- d.* Betrayal of a professional confidence.
- e.* Engaging in a professional conflict of interest.
- f.* Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.
- g.* Embalming or attempting to embalm a deceased human body without first having obtained authorization from a family member or representative of the deceased, except where embalming is done to meet the requirements of applicable state or local law. However, a funeral director may embalm without authority when, after due diligence, no authorized person can be contacted and embalming is in accordance with legal or accepted standards in the community, or the licensee has good reason to believe that the family wishes embalming. The order of priority for those persons authorized to permit embalming is found in Iowa Code section 144C.5. If embalming is performed under these circumstances, the licensee shall not be deemed to be in violation of the prohibition in this paragraph.
- h.* Failure to keep and maintain records as required by Iowa Code chapter 156 and associated rules.

104.3(5) Unlicensed practice.

- a.* Practicing mortuary science when one's license has been suspended, revoked, or surrendered, or when one's license is on inactive status.
- b.* Practicing mortuary science within an unlicensed funeral or cremation establishment.
- c.* Permitting an unlicensed employee or other person under the licensee's control or supervision to perform activities requiring a license.
- d.* Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice mortuary science, or aiding or abetting a licensee, license applicant or unlicensed person in committing any act or omission which is grounds for discipline under this rule or is an unlawful act by a nonlicensee under Iowa Code section 156.16.

104.3(6) Lack of proper qualifications.

- a.* Continuing to practice as a funeral director without satisfying the continuing education mandated by 645—Chapter 102.

b. Acting as a preceptor or continuing education provider without proper board approval or qualification.

c. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the licensee's ability to practice in a safe and competent manner.

d. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b."

104.3(7) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes:

a. A failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results.

b. Any conduct, practice or condition which impairs a licensee's ability to safely and skillfully practice the profession.

104.3(8) Professional misconduct.

a. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

b. Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of mortuary science, including, but not limited to, Iowa Code chapters 272C, 144, 147, 156, 523A, 523I, 566, and 566A; board rules, including rules of professional conduct set forth in 645—Chapter 100; and regulations promulgated by the Federal Trade Commission relating to funeral services or merchandise, or funeral or cremation establishments, as applicable to the profession. Any violation involving deception, dishonesty or moral turpitude shall be deemed related to the practice of mortuary science.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation, or failure to fully cooperate with a licensee disciplinary investigation or investigation against a nonlicensee, including failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.

104.3(9) Willful or repeated violations. The willful or repeated violation of any provision of Iowa Code chapter 147, 156, or 272C.

104.3(10) Failure to report.

a. Failure by a licensee or an applicant for licensure to report in writing to the board any revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action.

b. Failure of a licensee or an applicant for licensure to report, within 30 days of the action, any voluntary surrender of a professional license to resolve a pending disciplinary investigation or action.

c. Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

d. Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

e. Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

f. Failure to report a change of name or address within 30 days after it occurs.

104.3(11) Failure to comply with board order.

a. Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

b. Failure to pay costs assessed in any disciplinary action.

104.3(12) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding

or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.

104.3(13) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

104.3(14) Failure to comply with conditions of Iowa Code sections 142C.10 and 142C.10A.

645—104.4(17A,147,156,272C) Grounds for discipline against funeral establishments and cremation establishments. The board may initiate disciplinary action against a funeral establishment or cremation establishment, at time of license application or thereafter, based on all grounds set forth in Iowa Code section 156.15, summarized as follows:

104.4(1) The licensee or applicant has been convicted of a felony or any crime related to the practice of mortuary science or implicating the establishment's ability to safely perform mortuary science services, or if the applicant is an association, joint stock company, partnership, or corporation, the managing officer or owner has been convicted of such a crime under the laws of this state, another state, or the United States.

104.4(2) The licensee or applicant, or any owner or employee of the establishment has violated Iowa Code chapter 156, rule 645—104.3(17A,147,156,272C), or any other rule promulgated by the board.

104.4(3) The licensee or applicant knowingly aided, assisted, procured, or allowed a person to unlawfully practice mortuary science.

104.4(4) The licensee or applicant failed to engage in or ceased to engage in the business described in the application for licensure.

104.4(5) The licensee or applicant failed to keep and maintain records as required by Iowa Code chapter 156 or rules promulgated by the board.

104.4(6) The licensee or owner of the establishment has violated the smokefree air Act, Iowa Code chapter 142D.

645—104.5(17A,147,156,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revoke a license.
2. Suspend a license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Place a licensee on probation and impose such conditions as the board may reasonably impose including, but not limited to, requiring periodic reporting to the board designated features of the licensee's practice of mortuary science.
5. Require additional education or training. The board may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether that continuing education be in addition to the continuing education routinely required for license renewal. The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a license.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1,000 against an individual licensed as a funeral director, or not to exceed \$10,000 against a licensed funeral establishment or cremation establishment. Civil penalties may be imposed for any of the disciplinary violations specified in rules 645—104.3(17A,147,156,272C) and 645—104.4(17A,147,156,272C), as applicable.
9. Issue a citation and warning, or reprimand.

10. Refuse to issue or renew a license.
11. Such other sanctions allowed by law as may be appropriate.

645—104.6(17A,147,156,272C) Board discretion in imposing disciplinary sanctions. Factors the board will consider when determining the nature and severity of the disciplinary sanction to be imposed, including whether to assess and the amount of civil penalties, include:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state.
2. Whether the amount of a civil penalty will be a substantial deterrent to the violation.
3. The circumstances leading to the violation.
4. The risk of harm to the public.
5. The economic benefits gained by the licensee as a result of the violation.
6. The interest of the public.
7. Evidence of reform or remedial action.
8. Time lapsed since the violation occurred.
9. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.
10. The clarity of the issues involved.
11. Whether the violation was willful and intentional.
12. Whether the nonlicensee acted in bad faith.
13. The extent to which the licensee cooperated with the board.
14. Whether a licensee holding an inactive, suspended, restricted or revoked license engaged in practices which require licensure.
15. Any extenuating factors or other countervailing considerations.
16. Number and seriousness of prior violations or complaints.
17. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—104.7 Reserved.

645—104.8(17A,147,156,272C) Informal discussion. If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. The licensee is not required to attend the informal discussion. By electing to attend, the licensee waives the right to seek disqualification, based upon personal investigation of a board or staff member, from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

These rules are intended to implement Iowa Code chapters 17A, 147, 156, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 105
“Enforcement Proceedings Against Nonlicensees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 156, 147.36, and 147.76
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 156, 17A, 147, and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
1:30 p.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

The intent of proposed Chapter 105 is to impose civil penalties against persons who are not licensed by the Board of Mortuary Science and practicing mortuary science for the purpose of protecting the public who rely upon licensed individuals and establishments for the performance of mortuary science services.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. Chapter 105 contains only those disciplinary grounds that are unique to the mortuary sciences profession and are therefore excluded from the general disciplinary chapter.

- Classes of persons that will benefit from the proposed rulemaking:

The Board believes the benefit of this chapter is being achieved. In the last five years, there has been only one complaint opened against an establishment providing unlicensed mortuary science services. By having clearly articulated minimum standards for an establishment and a means by which to hold establishments accountable, the Board is helping to ensure public protection.

Unlicensed individuals providing mortuary science services may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.29 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

The intended benefit of this chapter is to ensure public safety and maintain a high level of consumer protection for Iowans. In the last five years, there has been only one complaint opened against an establishment providing unlicensed mortuary science services. By having clearly articulated minimum standards for an establishment and a means by which to hold establishments accountable, the Board is helping to ensure public protection.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board believes that the benefits achieved justify the low cost because the practice of mortuary science requires skill and precision.

There is a potential cost to licensees where disciplinary action is taken against them, with disciplinary fines being capped at \$1,000 per public order.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline against unlicensed individuals for violating a provision of this chapter ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this board at approximately 0.29 FTE position. Due to the low number of complaints associated with this board, costs specific to managing complaints and investigations are minimal.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$0 was paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes benefits achieved justify the costs. The cost of inaction would increase the potential for injury to the public by allowing licensed providers to continue providing services without corrective measures, education, or any form of discipline. Because there are only a small number of complaints submitted, costs are extremely low.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent and safe practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the mortuary science profession and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to protect the public from unscrupulous or potentially dangerous establishments. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize Board processes across all professional licensing boards. The proposed revisions support this effort.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure consumer protection and public safety against individuals that violate the provision of this chapter. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following new 645—Chapter 105:

CHAPTER 105 ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

645—105.1(156) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 156.16. In addition to the procedures set forth in Iowa Code section 156.16, this chapter will apply.

645—105.2(156) Unlawful practices. Practices by unlicensed persons or establishments which are subject to civil penalties include, but are not limited to:

1. Acts or practices by unlicensed persons which require licensure as a funeral director under Iowa Code chapter 156.
2. Acts or practices by unlicensed establishments which require licensure as a funeral establishment or cremation establishment under Iowa Code chapter 156.
3. Use of the words “funeral director,” “mortician,” or other title in a manner which states or implies that the person is engaged in the practice of mortuary science as defined in Iowa Code chapter 156.
4. Use or attempted use of a licensee’s certificate or an expired, suspended, revoked, or nonexistent certificate.
5. Falsely impersonating a licensed funeral director.
6. Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
7. Other violations of Iowa Code chapter 156.
8. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

645—105.3(156) Investigations. The board is authorized by Iowa Code sections 17A.13(1) and 156.16 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations will conform to the procedures outlined in this chapter. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

645—105.4(156) Subpoenas. Pursuant to Iowa Code sections 17A.13(1) and 156.16, the board is authorized in connection with an investigation of an unlicensed person or establishment to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in rule 645—9.5(17A,272C).

645—105.5(156) Notice of intent to impose civil penalties. The notice of the board’s intent to issue an order to require compliance with Iowa Code chapter 156 and to impose a civil penalty will be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ. P. 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 156.
5. Notice of the nonlicensee’s right to a hearing and the time frame in which hearing must be requested.
6. The address to which written request for hearing must be made.

645—105.6(156) Requests for hearings.

105.6(1) Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa R. Civ. P. 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

105.6(2) If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 156, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

105.6(3) If a request for hearing is timely made, the board will issue a notice of hearing and conduct a contested case hearing in the same manner as applicable to disciplinary cases against licensees.

105.6(4) A nonlicensed person who fails to timely request a contested case hearing will have failed to exhaust "adequate administrative remedies" as that term is used in Iowa Code section 17A.19(1).

105.6(5) A nonlicensed person who is aggrieved or adversely affected by the board's final decision following a contested case hearing may seek judicial review as provided in Iowa Code section 17A.19.

105.6(6) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 156 at any stage of the proceeding upon mutual consent of the board.

105.6(7) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule 645—11.30(272C). Hearings will be open to the public.

645—105.7(156) Factors to consider. The board may consider the following when determining the amount of civil penalty to impose, if any:

1. Whether the amount imposed will be a substantial economic deterrent to the violation.
2. The circumstances leading to the violation.
3. The severity of the violation and the risk of harm to the public.
4. The economic benefits gained by the violator as a result of noncompliance.
5. The interest of the public.
6. The time lapsed since the unlawful practice occurred.
7. Evidence of reform or remedial actions.
8. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
9. Whether the violation involved an element of deception.
10. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
11. The clarity of the issue involved.
12. Whether the violation was willful and intentional.
13. Whether the nonlicensee acted in bad faith.
14. Whether the nonlicensee cooperated with the board.

645—105.8(156) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement as provided in Iowa Code section 156.16.

These rules are intended to implement Iowa Code chapters 17A, 147, and 156.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 121
“Licensure of Hearing Aid Specialists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 272C.3, 272C.4 and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154A and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:50 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules set minimum standards for entry into the hearing aid dispenser profession. Iowa residents, licensees and employers benefit from the rules as they articulate the processes by which individuals apply for licensure as a hearing aid dispenser in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee.

There are no educational requirements to become an Iowa licensed hearing aid specialist, but applicants must pay applicable fees and pass an examination in order to obtain a license. The examination fees are (1) \$225 for the national examination through the International Hearing Society (IHS); or (2) \$146 for the Praxis examination in Audiology through the Educational Testing Service.

The application fee is \$156, and the renewal fee is \$60.

These costs are comparable to, or less than, surrounding states. In Nebraska, applicants must pay the \$225 fee for the national examination through IHS and an application fee of \$165. In Minnesota, applicants must complete a Hearing Instrument Dispenser examination at a cost of \$1,200 and pay an application fee of \$772.50.

Board of Hearing Aid Specialists staff review applications for initial and renewal licenses and for licensure reinstatement. Board staff also answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.33 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified hearing aid specialists.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The costs for examination required are \$225 or \$146, depending on which examination the applicant takes. Licensing fees are \$156 for an initial license and \$60 for each renewal period.

- Qualitative description of impact:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified hearing aid specialists. Licensing requirements in Iowa are very similar to those in surrounding states.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals, reactivations and reinstatements. Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.33 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees, not the State. There is no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Licensing is the highest form of regulation. Lower forms of regulation could be viable, such as registration. That said, hearing aid dispensing is regulated in all 50 states. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans.

Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of hearing aid dispensers in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the state of Iowa are similar to those of surrounding states. The surrounding states all require similar licensing procedures for hearing aid specialists.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of hearing aid specialists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of hearing aid specialists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment this Board is now part of DIAL. DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize Board processes across all professional licensing boards. The revisions of these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the licensure of hearing aid specialists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of hearing aid specialists in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of hearing aid specialists.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for hearing aid specialists. While some hearing aid specialists are running a small business of their own, others work for large corporations, medical facilities or hospitals. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 121 and adopt the following **new** chapter in lieu thereof:

HEARING AID SPECIALISTS

| | |
|-------------|--|
| CHAPTER 121 | LICENSURE OF HEARING AID SPECIALISTS |
| CHAPTER 122 | CONTINUING EDUCATION FOR HEARING AID SPECIALISTS |
| CHAPTER 123 | PRACTICE OF HEARING AID DISPENSING |
| CHAPTER 124 | DISCIPLINE FOR HEARING AID SPECIALISTS |

CHAPTER 121
LICENSURE OF HEARING AID SPECIALISTS

645—121.1(154A) Definitions. For purposes of these rules, the following definitions apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of hearing aid specialists.

“*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.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Hearing aid specialist*” means any person engaged in the fitting, dispensing and sale of hearing aids and providing hearing aid services or maintenance by means of procedures stipulated by Iowa Code chapter 154A or the board. These rules are not intended to regulate unlicensed people who sell, dispense, market, use, distribute, or provide customer support to over-the-counter hearing aids, as regulated by the U.S. food and drug administration.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*License*” means a license issued by the state to a hearing aid specialist.

“*Licensee*” means any person licensed to practice as a hearing aid specialist in the state of Iowa.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice as a hearing aid specialist to an applicant who is or has been licensed in another state.

“*National examination*” means the standardized licensing examination of the International Hearing Society (IHS) or its successor organization.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—121.14(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in rule 645—11.31(272C). Once the license is reinstated, the licensee may apply for active status.

“*Temporary permit*” means a permit issued while the applicant is in training to become a licensed hearing aid specialist.

“*Trainee*” means the holder of a temporary permit.

645—121.2(154A) Temporary permits.

121.2(1) The applicant will submit a completed online application and pay the nonrefundable licensure fee specified in rule 645—5.7(147,154A). The application will be accompanied by a statement from the employer, which includes the following information:

- a. The type of supervision to be provided to the trainee;
- b. A list of the subjects to be covered;
- c. The books and other training materials to be used for training; and
- d. An outline of the training program to prepare the trainee for examination.

121.2(2) A temporary permit is valid for one year and shall not be renewable.

121.2(3) The board reserves the right to deny an application for a temporary permit or rescind a temporary permit once issued.

645—121.3(154A) Supervision requirements.

121.3(1) The supervisor(s) of temporary permit holders will:

- a. Have a current hearing aid specialist license valid for the preceding 24 months;
- b. Have two years of actual experience in testing, fitting, and dispensing of hearing aids;
- c. Supervise no more than three trainees at the same time;
- d. Be responsible for training the temporary permit holder;
- e. For the first 90 days, provide a minimum of 20 hours of direct supervision;
- f. Provide direct supervision for any client activity that would require dispensing of hearing aids, including evaluation, selection, fitting or selling of hearing aids in the first 90 days;
- g. Evaluate the audiograms and determine which hearing aid and ear mold will best compensate for hearing loss;
- h. Cosign all audiometric evaluations and contracts processed by the trainee for the duration of the temporary permit;
- i. Submit, on a board-approved form, a supervision report for trainees prior to taking the board-approved examination. A supervision report is required each time the temporary permit holder submits a request to take the examination; and
- j. Notify the board within 15 days of the termination of the holder of a temporary permit.

121.3(2) A trainee with a temporary permit will notify the board in writing within ten days of an interruption of training due to loss of supervision and within 30 days, obtain a replacement supervisor for continuance of the training period. A statement will be signed by each supervisor.

121.3(3) If a statement by the replacement supervisor is not submitted, the trainee will revert to new trainee status.

645—121.4(154A) Requirements for initial licensure. The following criteria applies to licensure:

121.4(1) The applicant will submit a completed online application and pay the nonrefundable licensure fee specified in rule 645—5.7(147,154A).

121.4(2) The applicant will provide verification of passing one of the following examinations:

- a. The national examination through the International Hearing Society. The applicant may not take the national test through IHS more than six times without board approval.
- b. The Praxis exam in Audiology through the Educational Testing Service.

121.4(3) Applicants who hold a temporary permit are required to submit a supervisory report in accordance with paragraph 121.3(1) “i.”

121.4(4) An applicant who has been licensed in another state will provide verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- a. Licensee’s name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

121.4(5) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

121.4(6) Incomplete applications that have been on file in the board office for more than two years will be considered invalid and destroyed unless requested in writing by the candidate.

645—121.5(154A) Licensure by endorsement.

121.5(1) Applicants who have been a licensed hearing aid specialist under the laws of another jurisdiction may apply for licensure by endorsement by submitting the following:

- a.* Verification the applicant meets the requirements of rule 645—121.4(154A);
 - b.* Evidence of licensure requirements that are similar to those required in Iowa;
 - c.* Official verification of one of the following:
 - (1) A passing score on the national examination determined by the International Hearing Society;
 - (2) A passing score on an examination that the board determines is equivalent to the national examination; or
 - (3) Current certification from the National Board for Certification in Hearing Instrument Sciences;
- and
- d.* Evidence of:
 - (1) Completing a minimum of 32 continuing education hours within the 24 months prior to application; or
 - (2) Continuing education certificates that verify that the minimum hours of continuing education required by a state(s) in which the licensee is currently licensed have been met.

121.5(2) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—121.6(154A) Display of license. Hearing aid specialists will display their original licenses in a conspicuous public place at the primary site of practice.

645—121.7(154A) License renewal.

121.7(1) The biennial license renewal period for a hearing aid specialist license will begin on January 1 of each odd-numbered year and end on December 31 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

121.7(2) A licensee applying for renewal will:

- a.* Meet the continuing education requirements of rule 645—122.2(154A) and the mandatory reporting requirements of subrule 121.9(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.

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 next renewal two years later.

121.7(3) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.7(5). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

121.7(4) Mandatory reporter training requirements.

- a.* A licensee who examines, attends, counsels, or treats children, dependent adults or both in the scope of the licensee's professional practice will complete the applicable department of health and human services training relating to the identification reporting of child abuse, dependent adult abuse, or both. Written documentation of training completion should be maintained for three years. The training is not required if the licensee is engaged in active duty military service or holds a waiver demonstrating a hardship in complying with these training requirements.

b. The board may select licensees for audit of compliance with the requirements in rule 645—122.2(154A).

121.7(5) A two-year license will be issued after the requirements of the rule are met. If the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

121.7(6) Inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice until the license is reactivated.

645—121.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee will:

121.8(1) Submit a completed online reactivation application and payment of the nonrefundable application fee.

121.8(2) Provide verification of current competence to practice as a hearing aid specialist by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant will provide the following:

(1) Verification of the license(s) from the jurisdiction in which the applicant has most recently been licensed showing the licensee's name, date of initial licensure, current licensure status and any disciplinary action taken against the license; and

(2) Verification of completion of 32 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from the jurisdiction in which the applicant has most recently been licensed showing the licensee's name, date of initial licensure, current licensure status and any disciplinary action taken against the license; and

(2) Verification of completion of 64 hours of continuing education within two years of application for reactivation.

645—121.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation of the license prior to practicing as a hearing aid specialist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 154A and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 122
“Continuing Education for Hearing Aid Specialists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 272C.2 and 272C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154A and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:50 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for hearing aid specialists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that hearing aid specialists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the public. There is a direct cost to the licensee who must pay for the continuing education required. Private industries offer these courses; therefore, the Board of Hearing

Aid Specialists is not privy to exact costs. By way of example, Hearing Healthcare Instructional Institute offers continuing education credits for \$25 per credit. Currently, Iowa requires 32 continuing education units (CEUs) per biennium, so licensees may pay approximately \$800 per biennium. AudiologyOnline membership is \$99 per year and provides access to more than 1,500 audiology CEU courses. The Board has agreed to reduce continuing education hours to 24 for this profession, which is reflected in the proposed repromulgated rules. This reduction in hours takes the cost of continuing education down to \$600.

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.33 full-time equivalent (FTE) position, which includes questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that hearing aid specialists understand best practices in an evolving field, which allows them to provide the best care to Iowans and potentially reduces the number of complaints.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industries offer these courses, so the Board is not privy to exact costs. By way of example, Hearing Healthcare Instructional Institute offers continuing education credits for \$25 per credit. Currently, 32 CEUs are required per biennium, so licensees may pay approximately \$800 per biennium. AudiologyOnline membership is \$99 per year and provides access to more than 1,500 audiology CEU courses. The Board has agreed to reduce hours to 24 for this profession, which is reflected in the proposed repromulgated rules. This reduction in hours takes the cost of continuing education down to \$600.

Costs to the agency are the staff time needed to manage board activities, which includes continuing education. An executive officer supports the full scope of work of this Board at approximately 0.33 FTE position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.33 FTE position, which includes questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities which provide continuing education opportunities, not the State. There is not an anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board has recommended a reduction in hours from 32 to 24, which is reflected in the proposed rules for repromulgation. The proposed reduced hours would result in a cost savings to individual licensees for an estimated total savings of \$200.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce the amount of continuing education required. A review of surrounding states has shown that other states do successfully manage continuing education programs with fewer hours required per renewal cycle. Currently, Iowa requires 32 hours of continuing education every two years. A review of surrounding states indicates that Illinois and Kansas require 20 hours, Nebraska, Missouri and South Dakota require 24 and Minnesota requires 30. After discussions with the Board regarding this topic, representatives of the Board were in agreement to reduce the total number of hours every two years from 32 to 24.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board considered reducing the number of continuing education hours and ultimately went forward with recommending reduced hours.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did propose a less restrictive alternative to the current chapter, recommending a reduced number of continuing education hours.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules reduce the number of continuing education hours to be more consistent with neighboring states. The cost of continuing education is estimated at \$25 per hour. The proposed reduced hours would result in a cost savings to individual licensees for an estimated total savings of \$200.

Hearing aid specialists practice in a number of settings including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. The cost of continuing education could be greater for small business owners since they would be responsible for the entire cost, but the proposed reduction in continuing education hours ultimately reduces burden to the licensee.

Conversely, the entities that provide continuing education may face a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 122 and adopt the following **new** chapter in lieu thereof:

CHAPTER 122
CONTINUING EDUCATION FOR HEARING AID SPECIALISTS

645—122.1(154A) Definitions. For the purpose of these rules, the following definitions will apply:

“*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.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Continuing education*” means planned, organized learning acts 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.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules.

“*License*” means a license issued by the state to a hearing aid specialist.

“*Licensee*” means any person licensed to practice as a hearing aid specialist in the state of Iowa.

645—122.2(154A) Continuing education requirements.

122.2(1) The biennial continuing education compliance period extends 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 is required to complete a minimum of 24 hours of continuing education. A minimum of two hours will be in the content areas of Iowa hearing aid specialist law and rules, or ethics. Continuing education hours cannot be carried over to the next biennium.

122.2(2) 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.

122.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity.

122.2(4) The licensee is responsible for the cost of continuing education.

645—122.3(154A,272C) Standards.

122.3(1) General criteria. A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a.* Is an organized program of learning fundamental to the practice of the profession that contributes directly to the professional competency of the licensee;
- b.* Is conducted by individuals who have specialized education, training and experience in the subject matter of the program.
- c.* Fulfills stated program goals, objectives, or both; and
- d.* Provides proof of attendance including:
 - (1) Date, place, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

122.3(2) *Specific criteria.* Continuing education hours of credit may be obtained by completing the following in person or virtually:

- a.* Academic coursework if the coursework is offered by an accredited postsecondary educational institution. The maximum number of continuing education hours of credit for academic coursework per biennium is 15 hours with:
- b.* 1 academic semester hour = 15 continuing education hours; and 1 academic quarter hour = 10 continuing education hours.
- c.* A maximum of four hours of credit may be obtained by independent study. Independent study hours are subject to the requirements stated in the rules in this chapter and in 645—Chapter 4.
- d.* Attending programs, conferences, or business, technical, or professional seminars that enhance a licensee's ability to provide quality hearing health care services.
- e.* Mandatory reporter training, as specified in 645—subrule 121.9(4). Hours reported for credit shall not exceed the hours required for compliance.

These rules are intended to implement Iowa Code section 272C.2 and chapter 154A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 123
“Practice of Hearing Aid Dispensing”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147, 154A, 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154A and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:50 a.m.

6200 Park Avenue
Des Moines, Iowa 50321
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

The proposed rulemaking provides Iowans, licensees, and their employers with definitions relevant to the practice of hearing aid dispensing, requirements prior to the sale of a hearing aid, requirements for sales receipts for hearing aids, and requirements for recordkeeping and telehealth appointments. This rulemaking articulates practice standards and provides a scope of practice for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are costs associated with practice standards since there is often time, effort and money associated with compliance. Requirements prior to the sale of a hearing aid include that an individual over the age of 18 obtain a medical evaluation by a physician in order to determine whether the individual is a fit for a hearing aid or waives that requirement and submits to a hearing examination.

There are costs associated with this requirement to the public in the form of an office visit payment or co-payment. The Board of Hearing Aid Specialists believes an assessment is important because a hearing aid is a medical device and problems can occur if appropriate assessments are not conducted. Requirements for sales receipt of a hearing aid and recordkeeping require staff time and recordkeeping systems. This is an expense that the licensee assumes. Conversely, telehealth provides Iowans the ability to access care virtually, which has the potential to save individuals time and money. The Board does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

Costs to the agency are the staff time needed to manage the full scope of Board activities, which include oversight of practice standards, questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.33 of a full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this rulemaking. The rulemaking provides standards of practice for the licensee to ensure the licensee is following standards of care and providing adequate services to the consumer. The public is benefited by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

This is a small profession. There are approximately 435 licensed individuals who provide these services to Iowans. There are very few complaints submitted to this Board. In 2022, there were a total of five complaints submitted. Discipline is pending for three of those, one is awaiting resolution of criminal charges and another is closed with no probable cause. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession were not regulated, it could mean that less-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Hearing aid dispensing is regulated in all 50 states.

Consumers bear costs in the form of medical examinations required prior to placement of hearing aid devices. Telehealth appointments can minimize the cost of these appointments and lessen the burden on the consumer.

Licensees bear costs in the form of licensing fees and fees for recordkeeping and staff to ensure they are meeting the requirements for sales receipts of hearing aid devices.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean less-skilled individuals providing services and installing medical devices for consumers. An error in installation of a medical device could lead to significant injury to a consumer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.33 of an FTE position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation

Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This is a small profession. There are approximately 435 licensed individuals who provide these services to Iowans. There are very few complaints submitted to this Board. In 2022, there were a total of five complaints submitted. Discipline is pending for three of those, one is awaiting resolution of criminal charges and another is closed with no probable cause. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession were not regulated, it could mean that less-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Hearing aid dispensing is regulated in all 50 states.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Licensing is the highest form of regulation. Lower forms of regulation could be viable, such as a registration. That said, hearing aid dispensing is regulated in all 50 states. There is a new federal law that allows hearing aids to be sold directly to consumers in stores or online without a medical examination or a fitting for individuals over the age of 18.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board could consider less restrictive alternatives, such as registration as opposed to licensure. Currently, hearing aid dispensing is regulated in all 50 states. There is a new federal law that allows hearing aids to be sold directly to consumers in stores or online without a medical examination or a fitting for individuals over the age of 18.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board could consider less restrictive alternatives, such as registration as opposed to licensure. The Board believes that to ensure public safety and the integrity of the profession, licensure requirements should stay in effect. Currently, all 50 states regulate hearing aid dispensing. Not regulating this profession could jeopardize public safety and lead to serious injury for consumers. The Board believes regulations are necessary and critical to ensuring public safety, which is the paramount concern.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rule relates to high-stakes public safety concerns which are present whether the business is a small business or a large corporation. The rule is meant to ensure public safety in terms of practice standards for hearing aid dispensing. While some licensees could be running a small business, some also work for large hospitals, clinics and retailers. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 123 and adopt the following **new** chapter in lieu thereof:

CHAPTER 123
PRACTICE OF HEARING AID DISPENSING

645—123.1(154A) Definitions. For the purposes of these rules, the following definitions apply:

“*Health history*” means a series of questions pertaining to all of the following: client hearing needs and expectations; communication issues; otological conditions; medications; and previous amplification.

“*Hearing aid fitting*” means any of the following: the measurement of human hearing by any means for the purpose of selections, adaptations, and sales of hearing aids, and the instruction and counseling pertaining thereto, and demonstration of techniques in the use of hearing aids, and the making of earmold impressions as part of the fitting of hearing aids.

“*Sales receipt*” means a written record that is provided to a person who purchases a hearing aid. The sales receipt must be in compliance with these rules and be signed by the purchaser and the licensed hearing aid specialist. The requirements for the sales receipt may be found in rule 645—123.3(154A).

645—123.2(154A) Requirements prior to sale of a hearing aid.

123.2(1) Except as otherwise stated in these rules, no hearing aid shall be sold to an individual 18 years of age or older unless the individual:

- a. Provides a health history to a licensed hearing aid specialist;
- b. Presents a physician statement verifying that a medical evaluation, preferably by a physician specializing in diseases of the ear, has been done within the previous six months and stating the individual’s hearing loss, and that the individual may benefit from a hearing aid. In lieu of this requirement, the individual may verify in writing that the individual has been advised to obtain a medical evaluation by a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician, and that the individual chooses to waive said evaluation; and
- c. Is given a hearing examination that utilizes appropriate established procedures and instrumentation for the measurement of hearing and the fitting of hearing aids and that includes, but is not limited to, an assessment of the following: air conduction; bone conduction; masking capability; speech reception thresholds; speech discrimination; uncomfortable loudness levels (UCL) and most comfortable levels (MCL).

123.2(2) Any medical evaluation completed by a licensed physician requires all of the following prior to the sale of a hearing aid to an individual: receipt of the physician statement and clearance for amplification; and completion by the licensed hearing aid specialist of a current written health history and hearing examination that includes all of the procedures required in these rules, unless the physician order specifies otherwise. In the event an audiogram is provided by the physician, this testing requirement is waived. All records provided to the licensed hearing aid specialist will be maintained in the individual’s records in accordance with the record-keeping requirements in these rules.

123.2(3) Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid specialist or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid specialist or person holding a temporary permit will, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that the individual should consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician:

- a. Visible congenital or traumatic deformity of the ear.
- b. History of, or active drainage from the ear within the previous 90 days.
- c. History of sudden or rapidly progressive hearing loss within the previous 90 days.
- d. Acute or chronic dizziness.
- e. Unilateral hearing loss of sudden or recent onset within the previous 90 days. Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).
- f. Obstruction of the ear canal by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling, or tenderness from localized infections of the otherwise normal ear canal.

123.2(4) Testing is not required in cases in which replacement hearing aids of the same make or model are sold within one year of the original sale, unless a medical evaluation occurs during this period, which requires compliance with the requirements stated in 123.2(2).

123.2(5) Except as otherwise provided in these rules, for individuals younger than 18 years of age, all of the requirements stated in these rules are applicable. In addition, the following are required:

- a. Written authorization of a parent or legal guardian consenting to the services covered in these rules, and
- b. An original signature on all documents required by law or these rules to be signed, including all sales transactions and receipts, required notifications, and warranty agreements.

123.2(6) For individuals 12 years of age or younger, all of the requirements stated in these rules are applicable. In addition, the parent or legal guardian must first present a written, signed recommendation for a hearing aid from a licensed physician specializing in otolaryngology. The recommendation must have been made within the preceding six months. In the event of a lost or damaged hearing aid, a replacement of an identical hearing aid may be provided within one year, unless a medical evaluation occurs during this period, which requires compliance with the requirements stated in 123.2(2).

645—123.3(154A) Requirements for sales receipt. Upon sale of a hearing aid device, the licensee shall provide to the person a sales receipt, which will include the following:

1. Licensee's signature.
2. Licensee's business address.
3. Licensee's license number.
4. Client signature and address.
5. Make, model, and serial number of the hearing aid furnished.
6. Statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, if that is the fact.
7. Full terms of sale, including:
 - The date of sale;
 - Specific warranty terms, including whether any extended warranty is available through the manufacturer;
 - Specific return policy; and
 - Whether any trial period is available.
8. The following statement in type no smaller than the largest used in the body copy portion of the receipt: "The purchaser has been advised that any examination or representation made by a licensed hearing aid specialist in connection with the fitting or selection and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice."

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.

123.4(1) The records for each person will include:

- a.* A complete record of each test performed and the results of the test.
- b.* A copy of any written recommendations.
- c.* A copy of medical clearances or waivers.
- d.* A copy of the written sales receipt.
- e.* A copy of terms of sale, including any warranty. A record of any adjustments or services provided on the hearing aid device, including whether such services were provided under warranty or other agreement.
- f.* A notation that the client consented, either verbally or in writing, to a service or services provided through a telehealth appointment, if applicable.

123.4(2) No less than 30 days prior to closure of a licensee's business, the licensee will provide written notification to clients of the location at which records will be maintained for a period of no less than 30 days following closure and the procedure to obtain those records. The licensee may arrange the transfer of records to another licensee for the purpose of maintenance of the records, provided that all contractual agreements have been satisfied.

645—123.5(154A) Telehealth appointments. A licensee may conduct a telehealth appointment so long as the services are provided in accordance with this rule.

123.5(1) A "telehealth appointment" is one wherein the licensee provides testing or adjustment services to a client using technology where the hearing aid specialist and the client are not at the same physical location during the appointment.

123.5(2) Conducting a telehealth appointment with a client who is physically located in Iowa during the appointment, regardless of the location of the hearing aid specialist, requires Iowa licensure.

123.5(3) When conducting a telehealth appointment, a licensee will utilize technology that is secure, HIPAA-compliant, and that includes, at a minimum, audio and video equipment that allows for two-way, real-time interactive communication between the licensee and the client. The licensee may use non-real-time technologies to prepare for an appointment or to communicate with clients between appointments.

123.5(4) A licensee who conducts a telehealth appointment will be held to the same standard of care as a licensee who provides in-person services. A licensee will not utilize a telehealth appointment if the standard of care for the particular service cannot be met using telehealth technology.

123.5(5) Prior to the first telehealth appointment with a client, the licensee will obtain informed consent from the client that is specific to the service or services that will be provided in the telehealth appointment. The informed consent will specifically inform the client of, at a minimum, the following:

- a.* The risks and limitations of the use of technology to the specific service;
- b.* The potential for unauthorized access to protected health information; and
- c.* The potential for disruption of technology during a telehealth appointment.

123.5(6) A licensee will only conduct a telehealth appointment if the licensee is competent to provide the particular service using telehealth technology. A licensee's competence to provide a particular service using telehealth technology will be established by the licensee's education, training, and experience.

123.5(7) A licensee who conducts a telehealth appointment will note in the client's record that the service or services were provided through a telehealth appointment.

These rules are intended to implement Iowa Code chapter 154A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 124
“Discipline for Hearing Aid Specialists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.76, 272C.2 and 272C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154A and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:50 a.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

The proposed rulemaking provides protection to Iowans because it publicly defines required professional standards for hearing aid specialists. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, licensees can be subject to discipline against their license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Hearing Aid Specialists has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the hearing aid specialist profession and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The rule in this chapter is related to standard of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.33 full-time equivalent (FTE) position. This additionally includes responding to questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operation of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rule is to ensure public safety and maintain a high level of care for Iowans. The Board receives a low number of complaints. In 2022, there were a total of five complaints submitted. Discipline is pending for three of those, one is awaiting resolution of criminal charges and another is closed with no probable cause. Hearing aid dispensing is a very small profession at approximately 435 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, dispensing hearing aids is a form of health care that requires a level of skill, so the Board believes that regulation is necessary.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes the benefits achieved justify the low cost because dispensing hearing aids is a form of health care that requires a level of skill.

The Board has not identified a less restrictive alternative for public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.33 FTE position. This includes responding to questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Due to

the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal.

Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operation of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. No disciplinary fees have been paid into the General Fund yet for 2022 because discipline is pending.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of hearing aid dispensing requires skill and knowledge. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received five complaints and issued three public disciplinary actions. Hearing aid dispensing is a very small profession at approximately 435 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, dispensing hearing aids is a form of health care that requires a level of skill, so the Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative for public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the hearing aid dispenser profession and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the hearing aid dispenser profession and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rule relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rule is meant to ensure public safety in terms of practice standards for hearing aid specialists. While some hearing aid specialists may be running a small business of their own, some also work for large hospitals, clinics and retailers. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 124 and adopt the following new chapter in lieu thereof:

CHAPTER 124
DISCIPLINE FOR HEARING AID SPECIALISTS

645—124.1(154A,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—124.3(154A,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

124.1(1) Failure to comply with the current Code of Ethics of the International Hearing Society. The board hereby adopts by reference the current Code of Ethics of the International Hearing Society, available at www.ihsinfo.org.

124.1(2) Advertising that hearing testing or hearing screening is a medical examination used to diagnose or refer.

124.1(3) Except in cases of selling replacement hearing aids of the same make or model within one year of the original sale, a hearing aid will not be sold without adequate diagnostic testing and evaluation using established procedures to assess hearing needs as defined in 645—Chapter 123. Testing equipment will be calibrated to current standards at least annually or more often if necessary. The distributor will keep with the testing equipment a certificate indicating the date of calibration.

This rule is intended to implement Iowa Code chapters 147, 154A and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 131
“Licensure of Massage Therapists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 152C.3, 272C.3, 272C.4, 147.36, and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 152C, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/vic-ewjz-qdz
Phone: 1.336.515.0134
PIN: 836 758 241#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

Proposed Chapter 131 sets minimum standards for entry into the massage therapy profession. Iowa residents, licensees and employers benefit from the rules because they articulate the processes by which individuals apply for licensure as a massage therapist in Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the public has minimum competency. Requirements include the application process, minimum educational qualifications and exam requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. The application fee is \$120, and the renewal fee is \$60. These costs are comparable to surrounding states. The Nebraska application fee is \$110, Illinois is \$175, Missouri is \$125, South Dakota is \$165 and Wisconsin is \$150. Illinois applicants also incur a fingerprinting fee of approximately \$60.

The licensee would also have costs related to educational requirements and examination requirements. The average cost for education (Iowa requires a minimum of 600 hours of education) is \$12,608. The examination fee is \$265. These costs are comparable to surrounding states. The average cost for education in Nebraska is \$15,000 (Nebraska requires a minimum of 1,000 hours of education),

and the examination fee is \$265. In Illinois, the average cost for education is \$14,150 (Illinois requires a minimum of 600 hours of education), and the examination fee is \$265. In Missouri, the average cost for education is \$14,433 (Missouri requires a minimum of 500 hours of education), and the examination fee is \$265. In South Dakota, the average cost for education is \$8,200 (South Dakota requires a minimum of 500 hours of education), and the examination fee is \$265. In Wisconsin, the average cost for education is \$11,825 (Wisconsin requires a minimum of 500 hours of education), and the examination fee is \$265.

Iowa's initial licensure application process is similar to those implemented by other state boards of massage therapy. Some states, such as Nebraska, require applicants to also pass a state jurisprudence examination.

Board staff review applications for initial and renewal licenses, answer inquiries on licensing and field phone calls. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.25 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed chapter. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners. According to the Federation for State Massage Therapy Boards (FSMTB), Iowa is one of 47 states in the U.S. that regulates massage therapy.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The average cost for education (Iowa requires a minimum of 600 hours of education) is \$12,608. The examination fee is \$265.

Licensing fees include a \$120 application fee and a \$60 renewal fee.

- Qualitative description of impact:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals and reinstatements. Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.25 FTE to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.25 of an FTE position review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rule provides consistency related to the licensure of massage therapists in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of massage therapists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario, including the possibility of an increase in human trafficking and illicit massage establishments in Iowa.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the licensure of massage therapists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario, including the possibility of an increase in human trafficking and illicit massage establishments in Iowa.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of massage therapists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario, including the possibility of an increase in human trafficking and illicit massage establishments in Iowa.

Due to state government alignment this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for massage therapists. Many massage therapists run a small business of their own. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 131 and adopt the following **new** chapter in lieu thereof:

MASSAGE THERAPISTS

| | |
|-------------|---|
| CHAPTER 131 | LICENSURE OF MASSAGE THERAPISTS |
| CHAPTER 132 | MASSAGE THERAPY EDUCATION CURRICULUM |
| CHAPTER 133 | CONTINUING EDUCATION FOR MASSAGE THERAPISTS |
| CHAPTER 134 | DISCIPLINE FOR MASSAGE THERAPISTS |

CHAPTER 131
LICENSURE OF MASSAGE THERAPISTS

645—131.1(152C) Definitions.

“*Anniversary month*” means the month the license was issued by the board.

“*Board*” means the Iowa board of massage therapy.

“*Board-approved school*” means a school for massage therapy education that provides at least 600 hours of supervised academic instruction; has been recognized as legitimate by the board in the state where the school is located or in the state where the school was located if the school has since closed; has been recognized by a similar board in another jurisdiction that licenses massage therapists if massage therapy is not a licensed profession in the state where the school is located; and has not been denied, suspended, or revoked by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB).

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Issuing jurisdiction*” means the duly constituted authority in another state that has issued a massage therapy license to a person.

“*Licensee*” means any person licensed to practice as a massage therapist in the state of Iowa.

“*License expiration date*” means the fifteenth day of the anniversary month every two years.

“*Massage therapy*” means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

645—131.2(272C) Licensure by examination. A person who has completed the curriculum at a board-approved school may seek licensure in accordance with this rule.

131.2(1) Submit the following:

a. A completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.8(147). Official copies of academic transcripts sent directly to the board by the

board-approved school. If a school has closed and is no longer operational, the board will accept an official transcript provided by the applicant.

b. Proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination or the Massage and Bodywork Licensing Examination (MBLE_x) sent directly from the testing authority to the board. The passing score on the written examination is the passing point criterion established by the testing authority at the time the test was administered.

c. If the applicant has been issued one or more licenses to practice massage therapy by other issuing jurisdictions, verification of licenses from every jurisdiction in which the applicant has been licensed, sent directly from the issuing jurisdiction(s) to the board. Web-based verification may be substituted for verification from the jurisdiction's board office if the verification provides:

- (1) The licensee's name;
- (2) The date of initial licensure;
- (3) The applicant's current licensure status; and
- (4) Any disciplinary action taken against the license.

131.2(2) An applicant who has relocated to Iowa from a state that did not require licensure to practice massage therapy may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

645—131.3(152C) Educational qualifications for foreign-trained massage therapists. Prospective applicants who completed their education outside of the United States may receive credit for their education, provided they comply with the following:

131.3(1) Provide an equivalency evaluation of their educational credentials by one of the following entities demonstrating the curriculum is equivalent to that stated in these rules. The applicant bears the expense of the curriculum evaluation.

a. International Education Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone (310)258-9451; website www.ierf.org.

b. International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777; telephone (727)549-8555.

c. Josef Silny & Associates, Inc., 7101 SW 102nd Avenue, Miami, FL 33173; telephone (305)273-1616; website jsilny.org.

131.3(2) Provide a notarized copy of the certificate or diploma awarded to the applicant from a massage therapy program in the country in which the applicant was educated.

131.3(3) Receive a final determination from the board that the applicant's education is acceptable.

645—131.4(152C) Licensure by endorsement.

131.4(1) A person who has been issued a license to practice massage therapy by another issuing jurisdiction may seek licensure in accordance with this rule.

131.4(2) Submit the following:

a. A completed online application for licensure and pay nonrefundable licensure fee specified in rule 645—5.8(147).

b. Official copies of academic transcripts sent directly to the board by the board-approved school. If a school has closed and is no longer operational, the board will accept an official transcript provided by the applicant.

c. Proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination or the Massage and Bodywork Licensing Examination (MBLE_x) sent directly from the testing authority to the board. The passing score on the written examination is the passing point criterion established by the testing authority at the time the test was administered.

d. Proof that the licensure requirements in the issuing jurisdiction are equal to or exceed the requirements provided in rule 645—131.2(152C).

e. Verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the issuing jurisdiction(s) to the board. Web-based verification may be substituted for verification from the issuing jurisdiction's board office if the verification provides:

- (1) The licensee's name;
- (2) The date of initial licensure;
- (3) The applicant's current licensure status; and
- (4) Any disciplinary action taken against the license.

645—131.5(152C) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—131.6(152C) Temporary license. A person who is licensed to practice massage therapy in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement, and who does not seek licensure by verification, may be issued a temporary license in accordance with this rule.

131.6(1) An applicant for temporary license shall submit the following:

a. A completed online application for licensure and pay nonrefundable licensure fee specified in rule 645—5.8(147).

b. Verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the issuing jurisdiction(s) to the board. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

c. A plan for meeting all remaining requirements for licensure within one year of issuance of the temporary permit. Such a plan will include proof of enrollment in a school of massage therapy whose curriculum has been approved by the board, the date of enrollment, and the expected date of graduation.

131.6(2) A temporary license is valid for a period of up to one year and will not be renewed.

131.6(3) A temporary license holder shall be issued a permanent license upon the board's receipt of the following:

a. Official copies of academic transcripts sent directly to the board by the board-approved school demonstrating completion of all remaining hours of education for licensure.

b. Proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination or the Massage and Bodywork Licensing Examination (MBLEx) sent directly from the testing authority to the board. The passing score on the written examination is the passing point criterion established by the testing authority at the time the test was administered.

645—131.7(152C) License display. The license certificate and proof of active licensure will be displayed in a conspicuous public place at their primary site of practice.

645—131.8(152C) License renewal.

131.8(1) The biennial license renewal period begins on the sixteenth day of the anniversary month and ends on the fifteenth day of the anniversary month two years later. The licensee is responsible for renewing the license prior to its expiration.

131.8(2) Continuing education does not need to be completed during the first biennial license renewal period and is not a prerequisite for the first renewal of a license.

131.8(3) A licensee seeking renewal shall comply with the following before the license expiration date:

a. Submit a completed renewal application and renewal fee specified in rule 645—5.8(147), before the license expiration date; and

b. Meet the continuing education requirements of rule 645—133.2(152C) and the mandatory reporting requirements of subrule 131.8(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.

131.8(4) Mandatory reporter training.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities examines, attends, counsels, or treats children and dependent adults in Iowa shall complete the applicable department of health and human services' training related to the identification and reporting of child and dependent adult abuse as required by Iowa Code section 232.69(3) "b." The licensee will indicate on the renewal application completion of such training.

b. 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; or
- (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 the requirements due to a physical or mental disability or illness as provided in rule 645—4.14(272C).

c. The board may select licensees for audit of compliance with the requirements of this subrule.

131.8(5) Issuing renewals. Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license renewal. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

131.8(6) Late renewal. A license not renewed by the expiration date will be assessed a late fee as specified in 645—subrule 5.8(4). Completion of renewal requirements and submission of the late fee within the grace period are needed to renew the license.

131.8(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a massage therapist in Iowa until the license is reactivated. A licensee who practices as a massage therapist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—131.9(17A,147,272C) License reactivation.

131.9(1) A person whose license is inactive may apply to reactivate the license in accordance with this rule.

131.9(2) The licensee shall submit all of the following:

a. A completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.8(147). If the license has been inactive for five years or less, submission of:

- (1) Proof of completion of 16 hours of continuing education within two years of application; and
- (2) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license.

b. If the license has been on inactive status for more than five years, submission of:

- (1) Proof of completion of 16 hours of continuing education within two years of application;
- (2) Proof of two years of active, licensed practice in another issuing jurisdiction immediately prior to submitting the application, or proof of passing one of the following examinations within two years of submitting the application:

1. The National Certification Examination for Therapeutic Massage (NCETM);
2. The National Certification Examination for Therapeutic Massage and Bodywork (NCETMB);
3. The National Examination for States Licensing (NESL) option; or

4. The Massage and Bodywork Licensing Examination (MBLEx); and
- (3) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:
 1. Licensee's name;
 2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license.

645—131.10(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 rule 645—11.31(272C) and, if applicable, must apply for and be granted reactivation of the license in accordance with rule 645—131.9(17A,147,272C) prior to practicing as a massage therapist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 152C, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 132
“Massage Therapy Education Curriculum”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 152C.3, 147.76, 272C.3, 272C.4, and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 152C, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/vic-ewjz-qdz
Phone: 1.336.515.0134
PIN: 836 758 241#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

Proposed Chapter 132 sets minimum standards for the education provided to massage therapists. Iowa residents, licensees and employers benefit from the chapter since it articulates the processes by which schools can be recognized as an approved massage therapy school with an approved massage therapy curriculum. This includes ensuring the school meets curriculum requirements and student clinical practicum standards, as well as appropriate retention of school records. These requirements ensure public safety by setting standards that will allow schools to graduate students into the profession with the minimum competency needed to safely serve the public.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant because compliance with the minimum requirements for curriculum approval is at the expense of the school/owner.

Iowa currently has 21 massage therapy schools with approved curricula. The curriculum approval application fee is \$120, and approval is valid for up to two years. Documents required for approval include the school catalog, a description of the curriculum delivery system, course descriptions, and program accreditation or approval by other professional entities, as well as a sample diploma and a sample transcript.

Costs to the agency are staff salaries to support the work of the Board of Massage Therapy, which are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes less than 0.05 full-time equivalent (FTE) position to review curriculum approval materials. Curriculum approval fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of the chapter is to set minimum standards for the education provided to massage therapists. Iowa residents, licensees and employers benefit from the chapter because it articulates the processes by which schools can be recognized as having an approved massage therapy curriculum, and as an approved massage therapy school. This includes ensuring the school meets curriculum requirements and student clinical practicum standards, as well as appropriate retention of school records. These requirements ensure public safety by setting standards that will allow schools to graduate students into the profession with the minimum competency needed to safely serve the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no direct cost to the general public, but there is a cost to the applicant because compliance with the minimum requirements for curriculum approval is at the expense of the school/owner.

Iowa currently has 21 massage therapy schools with approved curricula. The curriculum approval application fee is \$120, and approval is valid for up to two years. Documents required for approval include the school catalog, a description of the curriculum delivery system, course descriptions, and program accreditation or approval by other professional entities, as well as a sample diploma and a sample transcript.

Costs to the agency are staff salaries to support the work of the Board of Massage Therapy, which are covered by the Fund. It takes less than 0.05 full-time equivalent (FTE) position to review curriculum approval materials. Curriculum approval fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing minimum education requirements ensures that practitioners are competent to practice. Without having an established threshold for education of the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to approve education curricula because approval ensures that Iowans are treated by competent and qualified practitioners.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Staff salaries to support the work of the Board are covered by the Fund. It takes less than 0.05 full-time equivalent (FTE) position to review curriculum approval materials. Curriculum approval fees go to the Fund to cover the operations of the regulated professional licensing boards.

Reviews are completed at the time of initial application and renewal. If a concern were to arise regarding the quality or legitimacy of an application, the application may be forwarded to the full Board for additional review prior to approval.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual massage therapy schools seeking curriculum approval, not the State. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Establishing minimum education requirements ensures that practitioners are competent to practice. Without having an established threshold for education of the profession, individuals who are not

appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to approve education curricula because approval ensures that Iowans are treated by competent and qualified practitioners.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to ensuring competency and protecting the public. Establishing minimum education requirements ensures that practitioners are competent to practice. Without having an established threshold for education of the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to approve education curricula because approval ensures that Iowans are treated by competent and qualified practitioners.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current internal process utilized for curriculum approval. Existing staff within the agency perform the curriculum review, and the internal time commitment is not such that outsourcing either task would result in the elimination of agency staff; outsourcing would only lead to additional costs borne by an external service provider. In addition, the chapter outlines standards related to the education and licensure of massage therapists, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for curriculum approval. Existing staff within the agency perform the curriculum review, and the internal time commitment is not such that outsourcing either task would result in the elimination of agency staff; outsourcing would only lead to additional costs borne by an external service provider. In addition, the chapter outlines standards related to the education and licensure of massage therapists, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for massage therapists, many of whom are running a small business of their own. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 132 and adopt the following **new** chapter in lieu thereof:

CHAPTER 132
MESSAGE THERAPY EDUCATION CURRICULUM

645—132.1(152C) Definitions.

“Approved curriculum” means that the massage therapy education course of study meets the criteria specified in this chapter and has been approved by the board of massage therapy.

“Board” means the board of massage therapy.

“Clinical practicum” means hands-on massage therapy provided to members of the public by a student who is enrolled at a massage therapy school and is under the supervision of an instructor who is an Iowa-licensed massage therapist, is physically present on the premises and is available for advice and assistance. “Clinical practicum” does not include classroom practice.

“Course of study” means a series of classroom courses, not including continuing education, which is approved by the board as having a unified purpose in training individuals toward a certificate, degree or diploma in the practice of massage therapy.

645—132.2(152C) Application for approval of massage therapy education curriculum.

132.2(1) Applications for curriculum approval of in-state massage therapy schools will be submitted online with the accompanying fee. Curriculum approval is valid for up to two years with reapplication for approval due June 30 of each even-numbered year. The biennial renewal cycle begins July 1 of an even-numbered year and ends June 30 two years later. Schools that receive curriculum approval within six months prior to the start of the next biennial renewal cycle do not need to reapply for curriculum approval until the following even-numbered year.

132.2(2) The application for curriculum approval includes the following:

- a. A completed board-approved application form;
- b. The curriculum approval application fee as specified in 645—Chapter 4;
- c. A completed Curriculum Criteria and Documentation form;
- d. The current school catalog, including name of the program(s), a description of the curriculum delivery system, course descriptions, and program accreditation or approval by other professional entities; and
- e. A sample diploma and a sample transcript that identify the name of the graduate, name of the program, graduation date, and the degree, diploma or certificate awarded.

132.2(3) Out-of-state school curriculum will be reviewed on a case-by-case basis upon receipt of the curriculum as a part of an individual’s application for licensure to practice massage therapy in the state of Iowa.

132.2(4) Massage therapy schools that do not renew curriculum approval by the expiration date shall be removed from the board’s list of approved curriculum providers until such time that they comply with curriculum approval requirements.

132.2(5) Schools that apply for curriculum approval shall, at a minimum, provide a curriculum that meets the requirements of this chapter, offer a course of study of at least 600 clock hours or the equivalent in academic credit hours, and require for entrance into the massage therapy school graduation from high school or its equivalent.

645—132.3(152C) Curriculum requirements. An approved curriculum will include but not be limited to the following content areas:

1. Massage Theory and Principles.
2. Massage Professional Practices.
3. The Therapeutic Relationship.
4. Anatomy, Physiology, and Pathology.
5. Assessment and Documentation.
6. Massage and Bodywork Application.
7. Palpation and Movement.
8. Adapting Sessions for Clients.
9. Career Development.
10. Iowa Law and Professional Ethics.

645—132.4(152C) Student clinical practicum standards.

132.4(1) The school must provide clinical practicum hours at the school's primary location or an event sponsored by the school.

132.4(2) At all times when the student delivers physical contact with the public or other students, a clinical instructor/supervisor who is an Iowa-licensed massage therapist shall be personally in attendance to supervise and evaluate.

132.4(3) Students shall complete at least 200 hours of coursework in the content areas of fundamentals of massage therapy and assessment that includes indications and contraindications for treatment prior to providing services to the public and beginning the clinical practicum. Included in this 200 hours will be a minimum of 100 hours in anatomy and physiology, which includes the structure and function of the human body and common pathologies.

132.4(4) The clinical practicum shall not exceed 25 percent of a program's total required hours.

645—132.5(152C) School records retention. Records documenting the student's completion of the curriculum will be maintained for two years following the student's graduation date. In the event of school closure, the board will be notified of the location of the records.

645—132.6(152C) Massage school curriculum compliance.

132.6(1) A school will maintain curriculum records and make the records available to the board upon request.

132.6(2) A school whose curriculum is approved shall notify the board in writing within 30 days if there is a change of address, a school closing, or a curriculum revision that does not meet the requirements of this chapter.

132.6(3) Each student who successfully completes curriculum requirements will be awarded a certificate or diploma that includes the student's legal name, date of graduation, the name of the program, and the degree or certificate awarded. The school will also provide them with an official transcript that includes the student's legal name and date of graduation.

645—132.7(152C) Denial or withdrawal of approval.

132.7(1) The board will deny or withdraw approval of a school curriculum if the board determines the curriculum does not meet the requirements of this chapter.

132.7(2) The board will notify the school in writing if the board denies or withdraws curriculum approval. Following denial or withdrawal of approval by the board, the school may request that the board reconsider its decision. The board in its sole discretion shall determine whether to grant such a request.

These rules are intended to implement Iowa Code chapter 152C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 133
“Continuing Education for Massage Therapists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 152C.3, 272C.2, 272C.3, and 147.76
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 152C, 272C, 147, and
17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Google Meet: meet.google.com/vic-ewjz-qdz
Phone: 1.336.515.0134
PIN: 836 758 241#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

Proposed Chapter 133 sets forth continuing education requirements for massage therapists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet to comply with the chapter, and the types of continuing education courses and activities that are permissible. The intended benefit of continuing education is to ensure massage therapists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the public. There is a direct cost to the licensee who must pay for the continuing education required. Private industry offers these courses, so the Board of Massage Therapy is not privy to exact costs. Based on research, the Board estimates the cost to be between \$240 and \$640, every two years, for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. An executive officer supports the full scope of work of this Board at approximately 0.39 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that massage therapists understand best practices in an evolving field, which allows them to provide the best care to Iowans and potentially reduces the number of complaints.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry offers these courses, so the Board of Massage Therapy is not privy to exact costs. Based on research estimates, the cost is between \$240 and \$640, every two years, for a licensee to meet these requirements. Currently, Iowa requires 16 hours of continuing education every two years for these license types.

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. An executive officer supports the full scope of work of this board at approximately 0.39 FTE position. Staff salaries to support the work of the Board are covered by the Fund.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.39 FTE position, which includes questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. Iowa requires 16 hours of continuing education every two years for this license type. Representatives of the Board reviewed the required hours and did not support reducing them.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

A reduction in continuing education hours would result in a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce the amount of continuing education required for massage therapists. Iowa requires 16 hours of continuing education for this license type every two years, as does Nebraska. Illinois requires 24 hours every two years, and Missouri requires 12 hours yearly. Representatives of the Board reviewed the required hours and did not support reducing them.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring if the Board would recommend lowering the continuing education requirements. The Board has considered a change of the total continuing education hours, the frequency and the safety of the public. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter maintains the number of continuing education hours. The cost of continuing education is estimated at \$15 to \$40 per hour. Massage therapists practice in a number of settings, but many own their own small businesses. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

A reduction in continuing education hours would result in a loss of revenue for the private industry organizations that offer these continuing education programs. These may also be offered by small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 133 and adopt the following **new** chapter in lieu thereof:

CHAPTER 133 CONTINUING EDUCATION FOR MASSAGE THERAPISTS

645—133.1(152C) Definitions.

“*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.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

“*Board*” means the board of massage therapy.

“*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.

“*Hands-on training*” means learning techniques that manipulate the soft tissue of the body.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a massage therapist in the state of Iowa.

“*Presenter*” means person(s)/instructor(s) providing continuing education training.

645—133.2(152C) Continuing education requirements. Each biennium, each person who is licensed to practice as a massage therapist in this state shall be required to complete a minimum of 16 hours of continuing education. A biennium is a two-year period beginning with the date the license was granted.

133.2(1) The biennial continuing education compliance period runs concurrently with each two-year renewal period. The renewal period begins on the date the initial license is granted and ends two years later on the day before the anniversary date of that initial license.

133.2(2) Requirements for new licensees. Those persons licensed for the first time are not 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 period may be used.

133.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity meeting the requirements of this chapter. These hours must be in accordance with these rules.

133.2(4) No hours of continuing education will be carried over into the next renewal period. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

133.2(5) The cost of continuing education is the responsibility of each licensee.

645—133.3(152C,272C) Continuing education criteria.

133.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance, including:
 - (1) Date, location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course from the course sponsor.

133.3(2) Specific criteria. A licensee shall obtain a minimum of 16 hours of continuing education credit every two years. A minimum of 8 hours of the 16 hours must be hands-on training. A maximum of 8 hours of the 16 hours may be independent study. Licensees may obtain continuing education hours of credit by:

- a.* Attending workshops, conferences, or symposiums.
- b.* Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.
- c.* Teaching curriculum at a school of massage therapy or presenting professional continuing education programs that meet the criteria listed in this subrule. One hour of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. A maximum of 4 hours may be awarded under this paragraph per biennium.
- d.* Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of massage therapy will be necessary in order for the licensee to receive the following continuing education credits:
 - 1 academic semester hour = 15 continuing education hours of credit
 - 1 academic trimester hour = 12 continuing education hours of credit
 - 1 academic quarter hour = 10 continuing education hours of credit
 - 1 academic clock hour = 1 continuing education hour of credit
- e.* Teaching in an approved college, university, or graduate school. The licensee may receive the following continuing education credits:
 - 1 academic semester hour = 15 continuing education hours of credit
 - 1 academic trimester hour = 12 continuing education hours of credit
 - 1 academic quarter hour = 10 continuing education hours of credit
- f.* Authoring research the results of which are published in a recognized professional publication. The licensee will receive 5 hours of credit per page.
- g.* Taking courses directly beneficial to business practices necessary for operating a massage practice. Content areas include, but are not limited to, business management, financial management, accounting, tax preparation, marketing, human relations, communication skills, business ethics, and massage ethics.
- h.* Taking courses related to personal skills topics, such as career burnout, communication skills, human relations, and other like topics.
- i.* Completing programs which enhance a supplemental or complementary skill set directly related to promoting the public health while providing massage therapy. Content areas include, but are not limited to, CPR, first aid, contraindication training, sanitation, and geriatric care.
- j.* Completing mandatory reporter training pursuant to Iowa Code sections 232.69 and 235B.16. One hour of credit will be awarded for each hour of completed mandatory reporter training.
- k.* Passing a board-approved national examination administered by the Federation of State Massage Therapy Boards or the National Certification Board for Therapeutic Massage and Bodywork within the biennial continuing education compliance period. A copy of the applicant's official notification may be used by the board as verification.

These rules are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 134
“Discipline for Massage Therapists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 152C.3, 147.76, 272C.3, 272C.4, and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 152C, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 a.m.

6200 Park Avenue
Des Moines, Iowa
Google Meet: meet.google.com/vic-ewjz-qdz
Phone: +1 336.515.0134
PIN: 836 758 241#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this regulatory analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

Proposed Chapter 134 provides protection to both the public and licensees because it publicly defines the need to obtain a massage therapy license in order to practice massage therapy, hold oneself out to the public as a massage therapist, or employ someone to provide these services, as directed in Iowa Code section 152C.4. Iowans have the ability to submit a complaint of unlicensed practice to the Board of Massage Therapy, who can then investigate the allegation and impose civil penalties, ensuring that the public is protected and licensed massage therapists are not competing against unlicensed individuals.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only the civil penalties that may be imposed when persons imply or represent themselves, or an individual they employ, to be massage therapists when they are not licensed. This is unique to the massage therapy profession and excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, there is a potential cost to those holding themselves or their employees out to be massage therapists if they are not licensed. Those practicing without a license

may be required to pay a civil penalty, up to \$10,000. The Board has statutory authority to impose a civil penalty on individuals practicing without a license.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when someone practices massage therapy without a license. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.39 full-time equivalent (FTE) position. This additionally includes responding to questions from the public and licensees on items such as licensure requirements, practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this chapter is to ensure public safety and maintain a high level of care for Iowans. In the first eight months of 2023, the Board received 22 complaints and took one public action for advertising and practicing without a license. While the number of complaints, when compared to the 3,200 massage therapy licensees, could call into question the extent to which a profession needs to be regulated, massage therapy is technical in nature, practitioners are serving clients who are vulnerable (often alone, partially or fully disrobed, and lying down), and the majority of the complaints received are related to sexual boundary violations or unlicensed practice. To protect the public and licensees, the Board believes that regulation is necessary. Additionally, the chapter satisfies the statutory requirement.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Costs associated with the number of complaints submitted are relatively low. The Board believes that the benefits achieved justify the low cost because ensuring that massage therapists are adequately educated and trained protects the public from harm.

The Board has not identified a less restrictive alternative to public protection. Exemptions already exist in statute that allow those providing services like reflexology and energy work to do so without a massage therapy license. There could be a consideration for allowing complaints about unlicensed practice or those falsely representing themselves or others to be massage therapists to be investigated by law enforcement, but the Board believes that the ability to impose civil penalties is important in order to reduce the risk of Iowans receiving massage therapy services from those who may be incompetent or even predatory.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when someone practices massage therapy without a license. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.39 FTE position. This additionally includes responding to questions from the public and licensees on items such as licensure requirements, practice standards, continuing education, Board meeting administration, etc. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are minimal.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$500 was paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are only a small number of complaints submitted, costs are extremely low. In the first eight months of 2023, the Board received 22 complaints and took one public action for advertising and practicing without a license. While the number of complaints, when compared to the 3,200 massage therapy licensees, could call into question the extent to which a profession needs to be regulated, massage therapy is technical in nature, practitioners are serving clients who are vulnerable (often alone, partially or fully disrobed, and lying down), and the majority of the complaints received are related to sexual boundary violations or unlicensed practice. To protect the public and licensees, the Board believes that regulation is necessary. Additionally, the chapter satisfies the statutory requirement.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. Exemptions already exist in statute that allow those providing services like reflexology and energy work to do so without a massage therapy license. There could be a consideration for allowing complaints about unlicensed practice or those falsely representing themselves or others to be massage therapists to be investigated by law enforcement, but the Board believes that the ability to impose civil penalties is important in order to reduce the risk of Iowans receiving massage therapy services from those who may be incompetent or even predatory.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only the civil penalties that may be imposed when persons imply or represent themselves, or an individual they employ, to be massage therapists when they are not licensed. This is unique to the massage therapy profession and excluded from the general disciplinary chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only the civil penalties that may be imposed when persons imply or represent themselves, or an individual they employ, to be massage therapists when they are not licensed. This is unique to the massage therapy profession and excluded from the general disciplinary chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for massage therapists, many of whom are running a small business of their own. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 134 and adopt the following **new** chapter in lieu thereof:

CHAPTER 134
DISCIPLINE FOR MASSAGE THERAPISTS

645—134.1(152C) Civil penalties.

134.1(1) Civil penalties may be imposed upon a person or business that employs an individual who is not licensed as a massage therapist. Civil penalties may be imposed upon a person or business that employs an individual who uses the initials “L.M.T.” or the words “licensed massage therapist,” “massage therapist,” “masseur,” or “masseuse,” or any other words or titles which imply or represent that the employed person practices massage therapy but who is not licensed as a massage therapist. Failure to follow the above may result in:

- a. A civil penalty not to exceed \$1,000 on a person or business that violates this rule:
 - (1) Each violation is a separate offense.
 - (2) Each day a continued violation occurs after citation by the board is a separate offense with the maximum penalty not to exceed \$10,000;
- b. The board’s inspection of any facility which advertises or offers services purporting to be delivered by massage therapists;
- c. A citation being sent to the alleged violator by certified mail, return receipt requested; and
- d. The board’s consideration of the following in determining civil penalties:
 - (1) Whether the amount imposed will be a substantial economic deterrent to the violation.
 - (2) The circumstances leading to or resulting in the violation.
 - (3) The severity of the violation and the risk of harm to the public.
 - (4) The economic benefits gained by the violator as a result of noncompliance.
 - (5) The welfare or best interest of the public.

134.1(2) Civil penalties may be imposed upon a person who is practicing as a massage therapist without a license. Civil penalties may be imposed upon a person who practices as an individual and uses the initials “L.M.T.” or the words “licensed massage therapist,” “massage therapist,” “masseur,” or “masseuse,” or any other words or titles which imply or represent that the person practices massage therapy but who is not licensed as a massage therapist. A person must be licensed as a massage therapist to practice in this state as a massage therapist. Failure to follow the above may result in:

- a. A civil penalty not to exceed \$1,000 on a person who violates this rule:
 - (1) Each violation is a separate offense.
 - (2) Each day a continued violation occurs after citation by the board is a separate offense with the maximum penalty not to exceed \$10,000;

b. The board's inspection of any facility which advertises or offers services purporting to be delivered by massage therapists;

c. A citation being sent to the alleged violator by certified mail, return receipt requested;

d. The board's consideration of the following in determining civil penalties:

(1) Whether the amount imposed will be a substantial economic deterrent to the violation.

(2) The circumstances leading to or resulting in the violation.

(3) The severity of the violation and the risk of harm to the public.

(4) The economic benefits gained by the violator as a result of noncompliance.

(5) The welfare or best interest of the public.

134.1(3) Issuing an order or citation.

a. The board shall provide a written notice and the opportunity to request a hearing on the record.

b. The hearing must be requested within 30 days of the issuance of the notice and shall be conducted according to Iowa Code chapter 17A.

c. The board may, in connection with a proceeding under this subrule, issue subpoenas to require the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

134.1(4) Judicial review.

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction.

134.1(5) A person is not in violation of the statute or rules if that person practices massage therapy for compensation while in attendance at a school offering a curriculum meeting the requirements of 645—Chapter 132 and is under the supervision of a member of the school's faculty.

These rules are intended to implement Iowa Code chapters 147, 152C, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 141
“Licensure of Nursing Home Administrators”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 155 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 155 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:30 a.m.

6200 Park Avenue
Des Moines, Iowa 50321
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules set minimum standards for entry into the nursing home administrator profession. Iowa residents, licensees and employers benefit from the rules because they articulate the processes by which individuals apply for licensure as a nursing home administrator in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualification and exam requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee.

Educational requirements to become an Iowa licensed nursing home administrator are a bachelor's degree as well as a practicum or an administrator-in-training program. Applicants must also pay applicable fees and pass an examination in order to obtain a license. The examination fees are \$440 for the CORE and NHA examinations through the National Association of Long Term Care Administrator Boards (NAB).

The application fee is \$120, and the renewal fee is \$60.

These costs are comparable to, or less than, those of surrounding states. The examination fee is the same for all states since it is a national exam. In Nebraska, applicants must pay the application fee of \$166. In Minnesota, applicants must pay an application fee of \$150.

Board of Nursing Home Administrators staff review applications for initial and renewal licenses, and for licensure reinstatement. Board staff also answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.45 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The cost for examinations required is \$440, depending on which examination the applicant takes. Licensing fees are \$156 for an initial license and \$60 for each renewal period.

- Qualitative description of impact:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. Licensing requirements in Iowa are very similar to those in surrounding states.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals, reactivations and reinstatements. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. It takes approximately 0.45 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees, not the State. There is no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Licensing is the highest form of regulation. Lower forms of regulation could be viable, such as registration. That said, nursing home administrators are licensed in all 50 states. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar

of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of nursing home administrators in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the State of Iowa are similar to those of surrounding states. The surrounding states all require similar licensing procedures for nursing home administrators.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to the licensure of nursing home administrators. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of nursing home administrators in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize Board processes across all professional licensing boards. These rule edits support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a less restrictive alternative to the licensure of nursing home administrators. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. In addition, the rulemaking provides consistency related to the licensure of nursing home administrators in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a less restrictive alternative to the licensure of nursing home administrators. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of nursing home administrators in other states, which makes obtaining licensure in multiple states simpler for applicants.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for nursing home administrators. Many nursing homes are owned by larger corporations, but there are a few smaller nursing homes where administrators are employed. Smaller nursing homes, especially in rural areas, are struggling to maintain licensed administrators. The Board was in agreement to extend the provisional license from 12 to 24 months. This does require a statute change as well as Iowa Code section 155.9, which only allows for 12 months. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 141 and adopt the following **new** chapter in lieu thereof:

NURSING HOME ADMINISTRATORS

CHAPTER 141 LICENSURE OF NURSING HOME ADMINISTRATORS
 CHAPTER 142 RESERVED
 CHAPTER 143 CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATION
 CHAPTER 144 DISCIPLINE FOR NURSING HOME ADMINISTRATORS

CHAPTER 141
 LICENSURE OF NURSING HOME ADMINISTRATORS

645—141.1(155) Definitions. For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Administrator*” means a licensed nursing home administrator.

“*Board*” means the board of nursing home administrators.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*HSE*” means a Health Services Executive as designated by the National Association of Long Term Care Administrator Boards.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Licensee*” means any person licensed to practice as a nursing home administrator 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 nursing home administration to an applicant who is or has been licensed in another state.

“*NAB*” means National Association of Long Term Care Administrator Boards.

“*Preceptor*” means a person who is currently licensed as a nursing home administrator and is approved by the department to supervise a person in a mentoring or administrator training program.

“*Provisional license*” means a license issued to an administrator appointed on a temporary basis to perform the duties of a nursing home administrator.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—141.15(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in rule 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.

645—141.2(155) Requirements for licensure. The following criteria shall apply to licensure:

141.2(1) Submit a completed online application and pay the nonrefundable licensure fee specified in rule 645—5.10(147,155);

141.2(2) Provide verification of certification as an HSE through NAB;

141.2(3) Provide verification of the following:

a. Transcripts verifying a baccalaureate or post baccalaureate degree sent directly from an accredited college or university;

b. Passing score on all required national NAB exams must meet all other licensure requirements to be approved to take the exam;

c. Completion of one of the following:

(1) Administrator training program;

(2) Practicum in long-term health care completed through an accredited college or university; or

(3) 2,080 hours of long-term health care administration may be approved by the board.

141.2(4) An applicant who has been licensed in another state will provide verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if it provides:

a. Licensee's name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the licensee.

645—141.3(147,155) Foreign-trained applicants. Foreign-trained nursing home administrators will:

141.3(1) Provide an equivalency evaluation of their educational credentials by International Educational Research Foundation, Inc., Credentials Evaluation Service. A candidate will be responsible for the expense of the curriculum evaluation.

141.3(2) Provide a copy of the certificate or diploma awarded to the applicant from a nursing home administration program in the country in which the applicant was educated.

141.3(3) Provide satisfactory evidence of completion of administrator training program, practicum or 2,080 hours of work experience in long-term health care administration.

645—141.4(155) Preceptor qualifications.

141.4(1) Current licensure and at least two years of experience as a nursing home administrator.

141.4(2) Completion of a preceptor training course in the 12 months immediately prior to the preceptorship.

141.4(3) Preceptor has not had his or her nursing home administrator license disciplined, limited, suspended, or placed on probation during the one year immediately prior to the application to act as a preceptor.

141.4(4) Is not related to the training administrator.

645—141.5(155) Provisional license. A provisional license may be issued to an administrator appointed on a temporary basis to perform the duties of a nursing home administrator. A provisional license is considered a temporary appointment, and the person appointed may serve as an administrator for a period of time not to exceed 12 months in an entire career. The 12 months in service are not required to be consecutive; however, a new application is required for each appointment period. It is the responsibility of the approved provisional administrator to maintain documentation of the actual dates the administrator serves in that capacity.

141.5(1) The limited circumstances under which the request for a provisional appointment will be granted include the inability of the licensed administrator to perform the administrator's duties, the death of the licensed administrator, or circumstances which prevent the immediate transfer of the licensed

administrator's duties to another licensed administrator. A provisional license will not be issued to a licensed nursing home administrator.

141.5(2) Application for a provisional license shall be in writing on forms prescribed by the board. Applicants will meet the following minimum qualifications:

- a.* Be at least 18 years of age.
- b.* Be employed on a full-time basis of no less than 40 hours per week to perform the duties of the nursing home administrator.
- c.* Be knowledgeable about the nursing home administrator's domains of practice including resident care; human resources; finance; physical environment; and leadership and management.
- d.* Be without a history of unprofessional conduct or denial of or disciplinary action against a license to practice nursing home administration or any other profession by any lawful licensing authority for reasons outlined in 645—Chapter 144.
- e.* Provide evidence to establish that the provisional appointment will not exceed the lifetime maximum period of 12 calendar months in duration. For any period in which the applicant previously served as a provisional administrator, written employment verification or a written attestation of the facility owner, chief operating officer, or board officer will satisfy this requirement.
- f.* Provide evidence that the provisional appointment complies with the requirements in 481—subrule 58.8(4). A written attestation of the facility owner, chief operating officer, or board officer will satisfy this requirement.

141.5(3) Applications for an extension of the time period for the provisional appointment within the same facility do not require the payment of an additional fee, as long as all other requirements stated in this rule are met.

141.5(4) The board expressly reserves the right to withdraw approval of a provisional appointment. Withdrawal of approval will be based on information or circumstances warranting such action. The provisional administrator will be notified of the withdrawal of approval in writing by certified mail.

645—141.6(155) Licensure by endorsement.

141.6(1) An applicant who has been a licensed nursing home administrator under the laws of another jurisdiction will 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:

- a.* Meets the requirements of rule 645—141.2(155).
- b.* Provides evidence of an active license as a nursing home administrator for at least two years just prior to application, or meets the qualifications outlined in rule 645—141.4(155).

141.6(2) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—141.7(147,155) License renewal.

141.7(1) The biennial license renewal period for a license to practice nursing home administration will begin on January 1 of each even-numbered year and end on December 31 of the next odd-numbered year. All licensees will renew on a biennial basis. The licensee is responsible for renewing the license prior to its expiration.

141.7(2) An individual who was issued a license within six months of the license renewal date does not need to renew the license until the subsequent renewal two years later.

141.7(3) A licensee applying for renewal shall:

- a.* Meet the continuing education requirements of rule 645—143.2(272C) and the mandatory reporting requirements of subrule 141.9(8). 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.

141.7(4) A two-year license will be issued after the requirements of the rule are met. If the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

141.7(5) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.10(3). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

141.7(6) Inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a nursing home administrator in Iowa until the license is reactivated.

141.7(7) Licensees will display their license certificate and proof of active licensure will be in a conspicuous public place at the primary site of practice.

141.7(8) Mandatory reporter training requirements.

a. A licensee who examines, attends, counsels, or treats children, dependent adults, or both in the scope of the licensee's professional practice will complete the applicable department of health and human services training relating to the identification reporting of child abuse, dependent adult abuse, or both. Written documentation of training completion should be maintained for three years. The training is not required if the licensee is engaged in active duty military service or holds a waiver demonstrating a hardship in complying with these training requirements.

b. The board may select licensees for audit of compliance with the requirements in subrule 141.7(8).

645—141.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

141.8(1) Submit a completed online reactivation application and pay the nonrefundable application fee.

141.8(2) Provide verification of current competence to practice as a nursing home administrator by satisfying the following criteria:

a. Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license; and

b. Verification of completion of 40 hours of continuing education within two years of the application for reactivation or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

645—141.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation of the license prior to practicing as a nursing home administrator in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 155, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 143
“Continuing Education for Nursing Home Administration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147, 155.10 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A, 147, 155 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:30 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

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Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for nursing home administrators. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that nursing home administrators maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Board of Nursing Home Administrators is not privy to exact costs, but based on research, the Board estimates the cost to be around \$462 to \$640 every two years for a licensee to meet these requirements

through the National Association of Long Term Care Administrator Boards (NAB). The cost is \$13 to \$16 per 1.25 continuing education units (CEUs), or a bundle of 12 CEUs could be completed for \$109. There are multiple other entities which also provide continuing education.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that nursing home administrators maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry including educational institutions, professional associations, and businesses offer these courses, so the Board is not privy to exact costs, but based on research, the Board estimates the cost to be around \$462 to \$640 every two years for a licensee to meet these requirements. There are multiple entities which provide continuing education courses to licensees.

The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 40 hours of continuing education for these license types every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit, because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.45 full-time equivalent (FTE) position, which includes questions from the public and licensees on matters such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board did not recommend a reduction in hours as Iowa's requirements are comparable to those of the surrounding states.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce the amount of continuing education required. A review of surrounding states has shown that other states have similar requirements per renewal cycle. Currently, Iowa requires 40 hours of continuing education for these license types every two years. Illinois requires 36 hours. Nebraska, Minnesota, Missouri and South Dakota all require 40 hours. Kansas requires 50 hours of continuing education.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board did not recommend a reduction in the number of continuing education hours. Iowa's continuing education hours are in line with those of other states in this region. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did not recommend a reduction in the number of continuing education hours. Iowa's continuing education hours are in line with those of other states in this region. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The cost of continuing education is estimated at \$13 to \$16 per 1.25 CEUs. Nursing home administrators practice in nursing homes only. While there are a few smaller nursing homes where administrators are employed, many are owned by larger corporations.

Conversely, the entities that provide continuing education may face a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 143 and adopt the following **new** chapter in lieu thereof:

CHAPTER 143 CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATION

645—143.1(272C) Definitions. For the purpose of these rules, the following definitions will apply:

“Active license” means the license is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Continuing education*” means planned, organized learning acts 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.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a nursing home administrator in the state of Iowa.

“*National Continuing Education Review Service (NCERS)*” means the continuing education review service operated by the National Association of Long Term Care Administrator Boards.

645—143.2(272C) Continuing education requirements.

143.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on January 1 of each even-numbered year and ending on December 31 of the next odd-numbered year. Each biennium, each person who is licensed to practice as a licensee in this state will be required to complete a minimum of 40 hours of continuing education. Continuing education hours do not carry over.

143.2(2) Requirements of new licensees. Those persons licensed for the first time will 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.

143.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity.

143.2(4) The licensee is responsible for the cost of continuing education.

645—143.3(155,272C) Standards.

143.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Is an organized program of learning fundamental to the practice of the profession which contributes directly to the professional competency of the licensee;
- b. Is conducted by individuals who have specialized education, training and experience in the subject matter of the program;
- c. Fulfills stated program goals, objectives, or both; and
- d. Provides proof of attendance including:
 - (1) Date(s), location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

143.3(2) Specific criteria. Licensees may obtain continuing education hours of credit by:

a. Participating in the continuing education programs approved by the National Continuing Education Review Service (NCERS).

b. Academic coursework that meets the criteria set forth in these rules. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

c. Attendance at or participation in a program or course which meets the requirements in 143.3(1).

d. Making presentations; conducting research; producing publications; preparing new courses; participating in home study courses; attending electronically transmitted courses; and attending workshops, conferences, or symposiums.

e. Self-study coursework that meets the criteria set forth in these rules. Continuing education credit equivalent for self-study is as follows:

180 minutes of self-study work = 1 continuing education hour

The maximum number of hours for self-study, including television viewing, video or sound-recorded programs, correspondence work, or research, or by other similar means which is not directly sponsored by and supervised by an accredited postsecondary college or university or NCERS, is eight hours.

645—143.4(155,272C) Exemptions. A licensee is exempt from the continuing education requirement when that person:

1. Served honorably on active duty in the military service;
2. Resided in another state with continuing education requirements that the applicant met;
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Has a disability, illness, or primary caregiver status requiring an extension of time or exemption upon approval by the board office.

These rules are intended to implement Iowa Code section 272C.2 and chapter 155.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 144
“Discipline for Nursing Home Administrators”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 155 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 155 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:30 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

The proposed rulemaking provides protection to Iowans as it publicly defines disciplinary options when a nursing home administrator fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, licensees can be subject to discipline against their license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Nursing Home Administrators has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the nursing home administrator profession and are therefore excluded from the general disciplinary chapter. The grounds for discipline required in this rulemaking are related to falsification of

facts contained in application documents or misappropriation of resident funds and are required by Iowa Code chapter 155.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The rule in this chapter is related to standard of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care for nursing home administrators. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.45 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees on matters such as practice standards, continuing education, Board meeting administration, etc. Due to the high number of complaints associated with this Board, costs specific to managing complaints and investigations are higher than those of other boards. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rule is to ensure public safety and maintain a high level of care for Iowans. The Board receives a high number of complaints. In 2022, there were a total of 51 complaints submitted. Two of those have had disciplinary action while others have had letters of warning, letters of education, remedial letters or been closed with no probable cause. There are approximately 912 licensed nursing home administrators or provisional administrators. The Board believes that the high number of complaints and the vulnerable nature of the population served demonstrates that regulation is necessary.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Costs specific to managing complaints and investigations are higher for this Board due to the number of complaints, but the Board believes that the benefits achieved justify the costs due to the population served and nature of the complaints. Nursing home administrators serve one of the most vulnerable populations and the severity of complaints is often higher.

There is a potential cost to licensees where disciplinary action is taken against them, with disciplinary fines being capped at \$1,000 per public order.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and

the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.45 FTE position. Due to the high number of complaints associated with this Board, costs specific to managing complaints and investigations are higher than those of some other boards.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$0 was paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are a high number of complaints associated with this Board, costs are higher than those of some other boards. The Board believes the benefits achieved justify the costs due to the population served and nature of the complaints. Nursing home administrators serve one of the most vulnerable populations and the severity of complaints is often higher.

The Board receives a high number of complaints. In 2022, there were a total of 51 complaints submitted. Two of those have had disciplinary action while others have had letters of warning, letters of education, remedial letters or been closed with no probable cause. There are approximately 912 licensed nursing home administrators or provisional administrators. The Board believes that the high number of complaints and the vulnerable nature of the population served demonstrates that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the nursing home administrator profession and are therefore excluded from the general disciplinary chapter. The grounds for discipline required in this rule are related to falsification of facts contained in application documents or misappropriation of resident funds and are required by Iowa Code chapter 155.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The specific ground for discipline required in this rule is related to falsification of facts contained in application documents or misappropriation of resident funds and are required by Iowa Code chapter 155.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rule relates to high-stakes public safety concerns which are present whether the business is a small business or a large organization. The rule is meant to ensure public safety in terms of practice standards for nursing home administrators. While there are a few smaller nursing homes where administrators are employed, many are owned by large corporations. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 144 and adopt the following new chapter in lieu thereof:

CHAPTER 144
DISCIPLINE FOR NURSING HOME ADMINISTRATORS

645—144.1(155,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—13.3(155,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13.

144.1(1) Any falsification or misrepresentation contained in any report or document attesting to the facts, conditions and activities of the internship or work experience and submitted by the applicant, administrator/preceptor or other participants may be grounds for denial of license or for suspension or revocation of the nursing home administrator license in addition to the imposition of fines and any other penalties provided by law.

144.1(2) Misappropriation of resident funds or facility funds.

This rule is intended to implement Iowa Code chapters 147, 155 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 180
“Licensure of Optometrists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 146.36, 154.3, 272C.3, 272C.4 and 272C.10

State or federal law(s) implemented by the rulemaking: 17A, 147, 154, and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:50 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules set minimum standards for entry into the optometry profession. Iowa residents, licensees and employers benefit from the rules because they articulate the processes by which individuals apply for licensure as an optometrist in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee.

Optometrists are required to confer a doctoral degree from a Board of Optometry-approved school of optometry. The average cost for a licensee to earn a degree is \$42,000 to \$74,800 for residents and \$89,600 to \$173,600 for non-residents. Applicants must also pay applicable fees and pass an examination in order to obtain a license. The examination fees are \$4,725 for the national examination through the National Board of Examiners in Optometry (NBEO).

The application fee is \$300 and the renewal fee is \$144.

These costs are comparable to surrounding states. In Nebraska, applicants must pay \$4,725 for the national examination through the NBEO, and an application fee of \$166 and renewal fee of \$166 as well as \$45.25 for fingerprints. In Minnesota, applicants must pay \$4,725 for the national examination through the NBEO and \$25 for the state exam. The application fee is \$283.25 (including fingerprints) and \$200 for renewal.

Board staff review applications for initial and renewal licenses and for licensure reinstatement. Board staff also answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.20 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the costs to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The cost for the examination required is \$4,725. Licensing fees are \$300 for an initial license and \$144 for each renewal period.

- Qualitative description of impact:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners. Licensing requirements in Iowa are very similar to those in surrounding states.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals, reactivations and reinstatements. Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.20 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board has not identified a less restrictive alternative to the licensure of optometrists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of optometrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the state of Iowa are similar to those in surrounding states. The surrounding states all require similar licensing procedures for optometrists.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to the licensure of optometrists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of optometrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing. DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize Board processes across all professional licensing boards. These rule revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a less restrictive alternative to the licensure of optometrists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of optometrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a less restrictive alternative to the licensure of optometrists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of optometrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for optometrists. While some optometrists likely are running a small business of their own, some also work for large corporations, hospitals and other medical facilities. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 180 and adopt the following **new** chapter in lieu thereof:

OPTOMETRISTS

CHAPTER 180 LICENSURE OF OPTOMETRISTS
 CHAPTER 181 CONTINUING EDUCATION FOR OPTOMETRISTS
 CHAPTER 182 PRACTICE OF OPTOMETRISTS
 CHAPTER 183 DISCIPLINE FOR OPTOMETRISTS

CHAPTER 180
 LICENSURE OF OPTOMETRISTS

645—180.1(154) Definitions. For purposes of these rules, the following definitions will apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of optometry.

“*CELMO*” means the Council on Endorsed Licensure Mobility for Optometrists.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Licensee*” means any person licensed to practice as an optometrist in the state of Iowa.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice optometry to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of optometrists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*NBEO*” means the National Board of Examiners in Optometry.

“*Optometrist*” means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry to employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of the conditions of the human eye and adnexa, excluding the use of injections other than to counteract an anaphylactic reaction, and notwithstanding Iowa Code section 147.107, may without charge supply any of the above pharmaceuticals to commence a course of therapy, with the exclusions cited in Iowa Code chapter 154.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—180.5(17A,147,272C) by which an inactive license is restored to active status.

“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.

“TPA” means therapeutic pharmaceutical agents.

645—180.2(154) Requirements for licensure.

180.2(1) The following criteria applies to licensure:

a. Submit a completed online application and pay the non-refundable licensure fee specified in rule 645—5.12(147,154).

b. Applicants will submit proof of satisfactory completion of all educational requirements contained in Iowa Code chapter 154 including official copies of academic transcripts sent directly to the board from an accredited school or college of optometry.

c. Applicants will submit proof of passing all current NBEO examinations.

d. An applicant who has been licensed in another state will provide verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- (1) Licensee’s name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

180.2(2) Reserved.

645—180.3(154) Licensure by endorsement.

180.3(1) Applicants who have been licensed as an optometrist in another state may apply for licensure by endorsement by submitting the following:

a. Verification the applicant meets the requirements of rule 645—180.2(154); and

b. Verification of current competence to practice as an optometrist by satisfying one of the following criteria:

- (1) Current CELMO certification;
- (2) Practice as an optometrist for a minimum of 2,080 hours during the preceding two-year period;
- (3) Employment as a faculty member teaching optometry in an accredited school of optometry for at least one academic year during the preceding two-year period;
- (4) Completion of a minimum of 50 hours of continuing education during the preceding two-year period; or
- (5) Passing the NBEO examination during the preceding two-year period.

180.3(2) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—180.4(154) License renewal.

180.4(1) The biennial license renewal period for a license to practice optometry will begin on July 1 of an even-numbered year and end on June 30 two years later. The licensee is responsible for renewing the license prior to its expiration.

180.4(2) An individual who was issued a license within six months of the license renewal date does not need to renew the license until the subsequent renewal two years later.

180.4(3) A licensee applying for renewal will:

a. Meet the continuing education requirements of rule 645—181.2(154) and the mandatory reporting requirements of subrule 180.5(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.

180.4(4) Mandatory reporter training requirements.

a. A licensee who examines, attends, counsels, or treats children, dependent adults, or both in the scope of the licensee's professional practice will complete the applicable department of health and human services training relating to the identification reporting of child abuse, dependent adult abuse, or both. Written documentation of training completion should be maintained for three years. The training is not required if the licensee is engaged in active duty military service or holds a waiver demonstrating a hardship in complying with these training requirements.

b. The board may select licensees for audit of compliance with the requirements in 645—Chapter 181.

180.4(5) A two-year license will be issued after the requirements of the rule are met. If the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

180.4(6) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

180.4(7) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.12(3). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

180.4(8) Inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice until the license is reactivated.

645—180.5(17A,147,272C) License reactivation. To apply for reactivation of an inactive license:

180.5(1) Submit a completed online reactivation application and payment of the non-refundable application fee.

180.5(2) If licensed in another jurisdiction, provide verification from the jurisdiction in which the licensee has most recently been licensed showing the licensee's name, date of initial licensure, current licensure status, and any disciplinary action taken against the licensee.

180.5(3) Verification of current competence to practice as an optometrist by satisfying one of the following criteria:

- a.* Practice as an optometrist for a minimum of 2,080 hours during the preceding two-year period;
- b.* Employment as a faculty member teaching optometry in an accredited school of optometry for at least one academic year during the preceding two-year period;
- c.* Completion of a minimum of 50 hours of continuing education during the preceding two-year period; or
- d.* Passing the NBEO examination during the preceding two-year period.

645—180.6(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation of the license prior to practicing as an optometrist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 181
“Continuing Education for Optometrists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147, 154 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:50 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for optometrists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rule, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that optometrists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industries offer these courses so the Board of Optometry is not privy to exact costs but, based on research, the Board estimates costs to be around \$30 to \$70 per hour or \$1,500 to \$3,500 every two years for a licensee to meet these

requirements. Conferences are a continuing education option which may cost significantly more when travel expenses are added. Online or distance learning continuing education will be cheaper. There are multiple entities that provide continuing education courses to licensees, and licensees can select which option they prefer based on cost or modality.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that optometrists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industries, including educational institutions, professional associations, and businesses, offer these courses, so the Board is not privy to exact costs but, based on research, the Board estimates costs to be around \$1,500 to \$3,500 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 50 hours of continuing education for these license types every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.20 full-time equivalent (FTE) position, which includes questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board did not recommend a reduction in hours because more required hours allows it to uphold a higher standard of care for the public.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce the amount of continuing education required. A review of surrounding states has shown that other states do successfully manage continuing education programs with fewer hours required per renewal cycle. Currently, Iowa requires 50 hours of continuing education for these license types every two years. Illinois requires 30 hours, Missouri requires 32, Minnesota requires 40, Nebraska requires 44, South Dakota requires 45 and Kansas requires 48. After discussions with the Board regarding this topic, Board members were not in agreement on reducing the total number of hours.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring if the Board would recommend lowering the continuing education requirements. The Board has considered a change of the total continuing education hours, the frequency and the safety of the public. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The cost of continuing education is estimated at \$30 to \$70 per hour. While some optometrists likely are running a small business of their own, some also work for large corporations, hospitals and other medical facilities. The cost of continuing education could be greater for small business owners as they would be responsible for the entire cost.

Conversely, the entities that provide continuing education may face a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 181 and adopt the following **new** chapter in lieu thereof:

CHAPTER 181 CONTINUING EDUCATION FOR OPTOMETRISTS

645—181.1(154) Definitions. For the purpose of these rules, the following definitions shall apply:

“*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.

“*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 optometry.

“*CELMO*” means the Council on Endorsed Licensure Mobility for Optometrists.

“*Continuing education*” means planned, organized learning acts 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.

“*Distance learning*” means a format that provides one-way content to the licensee without immediate interaction with the instructor including but not limited to correspondence courses, online courses and local study group programs.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*Interactive online CE*” means the format allows for immediate interaction and feedback between the audience and the instructor.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as an optometrist in the state of Iowa.

645—181.2(154) Continuing education requirements.

181.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on July 1 and ending on June 30 of each even-numbered year. Each biennium, each person who is licensed to practice as an optometrist in this state will be required to complete a minimum of 50 hours of continuing education approved by the board. Continuing education hours cannot be carried over to the next biennium.

181.2(2) Requirements of 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.

181.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity.

181.2(4) The licensee is responsible for the cost of continuing education.

645—181.3(154,272C) Standards.

181.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Is an organized program of learning fundamental to the practice of the profession which contributes directly to the professional competency of the licensee;
- b. Is conducted by individuals who have specialized education and training in the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- c. Fulfills stated program goals, objectives, or both; and
- d. Provides proof of attendance including:
 - (1) Date, location, course title, presenter(s);
 - (2) Numbers of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

181.3(2) Specific criteria.

a. Continuing education hours of credit may be obtained by attending:

(1) The continuing education programs of the Iowa Optometric Association, the American Optometric Association, the American Academy of Optometry, and national regional optometric congresses, schools of optometry, all state optometric associations, and any accredited department of ophthalmology;

(2) Postgraduate study through an accredited school or college of optometry;

(3) Meetings or seminars that are approved and certified for optometric continuing education by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education (COPE) committee;

b. The maximum number of hours in each category in each biennium is as follows:

(1) Five hours of credit for distance learning.

(2) Fifteen hours of credit for interactive online CE.

(3) Twenty hours of credit for postgraduate study courses as referenced in subparagraph 181.3(2) "a"(2).

c. Required continuing education hours. Licensees shall provide proof of continuing education in all of the following areas:

(1) Current certification in CPR offered in person by the American Heart Association, the American Red Cross or an equivalent organization. At least two hours per biennium is required, but credit will be granted for four hours.

(2) Training on child abuse and dependent adult abuse identification and reporting through the department of health and human services for all licensees who examine, attend, counsel or treat children or dependent adults in the scope of the professional practice. Initial two-hour courses need to be taken with six months of employment. One-hour recertification training needs to be done every three years.

(3) A minimum of one hour of continuing education per renewal period regarding guidelines for prescribing opioids, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options. Credit will be granted for up to two hours per renewal period. If the continuing education did not cover the United States Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, the licensee shall read the guideline prior to license renewal. "Opioid" means any drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

d. Current CELMO certification meets the continuing education requirements for licensees.

These rules are intended to implement Iowa Code section 272C.2 and chapter 154.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 182
“Practice of Optometrists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 154 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:50 a.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing (DIAL) and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

The proposed rulemaking provides Iowans, licensees, and their employers with definitions relevant to the practice of optometrists and requirements for record keeping, prescriptions and the use of injectables. This rulemaking articulates practice standards and provides a scope of practice for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are costs associated with practice standards since there is often time, effort and money associated with compliance. Members of the public would have costs associated with the services they are seeking to receive, which may include an office visit payment or copayment. Requirements for record keeping and electronic prescriptions require staff time and record keeping systems. Optometrists’ use of injectables also requires education and training. Each licensee’s practice has different variables, such as number of clients seen, nature of services provided, how services are delivered, (telehealth or

in person, administrative support). The Board of Optometry does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this rulemaking. The rulemaking provides standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public is benefited by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are approximately 720 licensed individuals who provide these services to Iowans. There are very few complaints submitted to this Board. In 2022, there were a total of five complaints submitted and the Board issued no public discipline. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession were not regulated, it could mean that less skilled individuals would provide this service to Iowans, which would be of concern to the Board. Optometry is regulated in all 50 states.

There are costs associated with this requirement to the public in the form of an office visit payment or copayment for the visit.

Licensees bear costs in the form of licensing fees.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean less skilled individuals providing evaluations and medical interventions to consumers. An error in treatment of an eye condition could lead to significant injury to a consumer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.20 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are approximately 720 licensed individuals who provide these services to Iowans. There are very few complaints submitted to this Board. In 2022, there were a total of five complaints submitted and the Board issued no public discipline. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession were not regulated, it could mean that less skilled individuals would provide this service to Iowans, which would be of concern to the Board. Optometry is regulated in all 50 states.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current process. Optometry is a medical profession that provides health care to Iowans. Optometrists utilize injectables and prescribe opioids, requiring ongoing monitoring for compliance and meeting practice standards. Optometrists require licensure in all states.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current process. Optometry is a medical profession that provides health care to Iowans. Optometrists utilize injectables and prescribe opioids, requiring ongoing monitoring for compliance and meeting practice standards. Optometrists require licensure in all states.

DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize Board processes across all professional licensing boards. These rule revisions support this effort.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current process. Optometry is a medical profession that provides health care to Iowans. Optometrists utilize injectables and prescribe opioids, requiring ongoing monitoring for compliance and meeting practice standards. Optometrists require licensure in all states.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. While some optometrists likely are running a small business of their own, some also work for large corporations, hospitals and other medical facilities. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 182 and adopt the following new chapter in lieu thereof:

CHAPTER 182 PRACTICE OF OPTOMETRISTS

645—182.1(154) Code of ethics. The board hereby adopts by reference the Code of Ethics of the American Optometric Association as published by the American Optometric Association, 243 North Lindbergh Boulevard, St. Louis, Missouri 63141, modified June 2007.

645—182.2(154,272C) Record keeping. Optometrists will maintain patient records in a manner consistent with the protection of the welfare of the patient. Records will be permanent, timely, accurate, legible, and easily understandable.

182.2(1) Optometrists will maintain optometry records for each patient. The records will contain all of the following:

a. Personal data.

- (1) Name, date of birth, address and, if a minor, name of parent or guardian; and
- (2) Name and telephone number of emergency contact.

b. Optometry and medical history. Optometry records will include information from the patient or the patient's parent or guardian regarding the patient's optometric and medical history. The information will include sufficient data to support the recommended treatment plan.

c. Patient's reason for visit. Optometric records will include the patient's stated visual health care reasons for visiting the optometrist.

d. Clinical examination progress notes. Optometric records will include chronological dates and descriptions of the following:

- (1) Clinical examination findings, tests conducted, and a summary of all pertinent diagnoses;
- (2) Plan of intended treatment and treatment sequence;
- (3) Services rendered and any treatment complications;
- (4) All ancillary testing, if applicable;
- (5) Vision tests completed and visual acuity;
- (6) Name, quantity, and strength of all drugs dispensed, administered, or prescribed; and
- (7) Name of optometrist who performs any treatment or service or who may have contact with a patient regarding the patient's optometric health.

e. Informed consent. Optometric records will include documentation of informed consent for procedure(s) and treatment that have potential serious complications and known risks.

182.2(2) Retention of records. An optometrist will maintain a patient's record(s) for a minimum of five years after the date of last examination, prescription, or treatment. Records for minors will be maintained for, at minimum, one year after the patient reaches the age of majority (18) or five years after the date of last examination, prescription, or treatment, whichever is longer.

Proper safeguards will be maintained to ensure the safety of records from destructive elements.

182.2(3) Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, an optometrist will keep either a duplicate hard-copy record or a back-up unalterable electronic record.

182.2(4) Correction of records. Notations will be legible, written in ink, and contain no erasures or white-outs. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by an optometric health care worker.

182.2(5) Confidentiality and transfer of records. Optometrists will preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or the patient's new optometrist, the optometrist will furnish such optometry records or copies of the records as will be beneficial for the future treatment of that patient. The optometrist may include a summary of the record(s) with the record(s) or copy of the record(s). The optometrist may charge a nominal fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees. The optometrist may ask for a written request for the record(s).

182.2(6) Retirement or discontinuance of practice. A licensee, upon retirement, or upon discontinuation of the practice of optometry, or upon leaving a practice or moving from a community, will notify all active patients in writing, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, that the licensee intends to discontinue the practice of optometry in the community, and will encourage patients to seek the services of another

licensee. The licensee will make reasonable arrangements with active patients for the transfer of patient records, or copies of those records, to the succeeding licensee. "Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to retirement, discontinuation of the practice of optometry, or leaving a practice or moving from a community.

182.2(7) Nothing stated in these rules will prohibit a licensee from conveying or transferring the licensee's patient records to another licensed optometrist who is assuming a practice, provided that written notice is furnished to all patients.

645—182.3(154) Furnishing prescriptions. Before a licensed optometrist provides a spectacle or contact lens prescription to a patient, the eye examination record will 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:

182.3(1) A contact lens prescription will contain the following information:

- a. Date of issuance;
- b. Name and date of birth of patient for whom the contact lens or lenses are prescribed;
- c. Name, address, and signature of the practitioner;
- d. All parameters required to duplicate properly the original contact lens;
- e. A specific date of expiration, not to exceed 18 months, the quantity of lenses allowed and the number of refills allowed; and
- f. At the option of the prescribing practitioner, the prescription may contain fitting and material guidelines and specific instructions for use by the patient.

182.3(2) Release of contact lens prescription.

a. After the contact lenses have been adequately adapted and the patient released from initial follow-up care by the prescribing practitioner, the prescribing practitioner will provide a copy of the contact lens prescription, at no cost, for the duplication of the original contact lens. A licensed optometrist may refuse to provide a copy of the contact lens prescription if the patient has not paid the fees associated with the exam from which the prescription was generated including applicable contact lens fitting fees.

b. A practitioner choosing to issue an oral prescription will furnish the same information required for the written prescription except for the written signature and address of the practitioner. An oral prescription may be released by an O.D. to any dispensing person who is a licensed professional with the O.D., M.D., D.O., or R.Ph. degree or a person under direct supervision of those licensed under Iowa Code chapter 148, 154 or 155A.

c. The issuing of an oral prescription will be followed by a written copy to be kept by the dispenser of the contact lenses until the date of expiration.

182.3(3) An ophthalmic spectacle lens prescription will contain the following information:

- a. Date of issuance;
- b. Name and date of birth of the patient for whom the ophthalmic lens or lenses are prescribed;
- c. Name, address, and signature of the practitioner issuing the prescription;
- d. All parameters necessary to duplicate properly the ophthalmic lens prescription;
- e. A specific date of expiration not to exceed two years; and
- f. A dispenser of ophthalmic materials, in spectacle or eyeglass form, must keep a valid copy of the prescription on file for two years.

182.3(4) Release of ophthalmic lens prescription.

a. The ophthalmic lens prescription will be furnished upon request at no additional charge to the patient. A licensed optometrist may refuse to provide a copy of the ophthalmic lens prescription if the patient has not paid the fees associated with the exam from which the prescription was generated.

b. The prescription, at the option of the prescriber, may contain adapting and material guidelines and may also contain specific instructions for use by the patient.

c. Spectacle lens prescriptions will be in written format, according to Iowa Code section 147.109(1).

645—182.4(155A) Prescription drug orders. Each prescription drug order furnished by an optometrist in this state will meet the following requirements:

182.4(1) Written prescription drug orders will contain:

- a. The date of issuance;
- b. The name and date of birth of the patient for whom the drug is dispensed;
- c. The name, strength, and quantity of the drug, medicine, or device prescribed;
- d. The directions for use of the drug, medicine, or device prescribed;
- e. The name, address, and written signature of the practitioner issuing the prescription; and
- f. The federal drug enforcement administration number, if required under Iowa Code chapter 124.

182.4(2) The practitioner issuing oral prescription drug orders will furnish the same information required for a written prescription, except for the written signature and address of the practitioner.

182.4(3) Prior to prescribing any controlled substance, an optometrist will review the patient's information contained in the prescription monitoring program database, unless the patient is receiving inpatient hospice care or long-term residential facility care.

182.4(4) Beginning January 1, 2020, every prescription issued for a prescription drug will be transmitted electronically unless exempted pursuant to Iowa Code section 124.308 or 155A.27. Beginning January 1, 2020, a licensee who fails to comply with the electronic prescription mandate may be subject to a nondisciplinary administrative penalty of \$250 per violation, up to a maximum of \$5,000 per calendar year.

645—182.5(154) Use of injectables. A licensed optometrist shall not administer any injection prior to receiving approval from the board. A licensed optometrist may administer only the following injections:

182.5(1) Subconjunctival injections for the medical treatment of the eye.

182.5(2) Intralesional injections for the treatment of chalazia.

182.5(3) Botulinum toxin to the muscles of facial expression innervated by the facial nerve, including for cosmetic purposes.

182.5(4) Injections to counteract an anaphylactic reaction.

182.5(5) Local anesthetics prior to a minor surgical procedure authorized by this chapter.

645—182.6(154) Education and training approval.

182.6(1) The board will not approve the use of injections other than to counteract an anaphylactic reaction unless the licensed optometrist demonstrates to the board sufficient educational or clinical training from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the Council for Higher Education Accreditation or by the United States Department of Education, or clinical training equivalent to clinical training offered by such an institution.

182.6(2) A licensed optometrist who completes the requirements of rule 645—182.7(154) is deemed approved by the board for use of injectables as outlined in this chapter.

645—182.7(154) Education and training. In order to use injections, a licensed optometrist will be able to show proof of completion of the following requirements for board approval:

182.7(1) Be fully licensed and in good standing within the state of Iowa as a licensed optometrist.

182.7(2) Have completed a total of 24 hours of approved educational training pertaining to injections.

a. At least 4 hours of the 24 hours must be clinical training.

b. At least 5 hours of the 24 hours must pertain to the administration and side effects of injection treatment for botulinum toxin and chalazia.

These rules are intended to implement Iowa Code chapters 154 and 155A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 183
“Discipline for Optometrists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 154 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:50 a.m.

6200 Park Avenue
Des Moines, Iowa
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

The proposed rulemaking provides protection to Iowans as it publicly defines disciplinary options when an optometrist fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in Iowa. When professional standards are not met, it can subject a licensee to discipline against a license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Optometry has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the optometry professions and are therefore excluded from the general disciplinary chapter. The grounds for discipline required in this rulemaking related to opioid prescribing are required by Iowa Code section 147.162.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The rule in this chapter is related to standard of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care in medical journals, etc. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this board at approximately 0.20 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rule is to ensure public safety and maintain a high level of care for Iowans. The Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received five complaints and issued no public discipline. Optometry is a very small profession at approximately 720 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, optometry is a form of medicine that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of optometry is a form of medicine that requires skill and precision.

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.20 FTE position. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$0 was paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of optometry is a form of medicine that requires skill and precision. The Board receives a low number of complaints and issues a small number of discipline. In 2022, the Board received five complaints and issued no public discipline. Optometry is a very small profession at approximately 720 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, optometry is a form of medicine that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the optometry professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules. The grounds for discipline required in this rule related to opioid prescribing are required by Iowa Code section 147.162.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The specific ground for discipline required in this rule related to opioid prescribing is required by Iowa Code section 147.162.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rule relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rule is meant to ensure public safety in terms of practice standards for optometrists. While some optometrists likely are running a small business of their own, some also work for large organizations, such as hospital systems. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 183 and adopt the following **new** chapter in lieu thereof:

CHAPTER 183
DISCIPLINE FOR OPTOMETRISTS

645—183.1(154,272C) Grounds for discipline.

183.1(1) The board may impose any of the disciplinary sanctions provided in rule 645—13.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in rule 645—Chapter 13.

183.1(2) Prescribing any controlled substance in dosage amounts that exceed what would be prescribed by a reasonably prudent licensee.

This rule is intended to implement Iowa Code chapters 147, 154 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 200
“Licensure of Physical Therapists and Physical Therapist Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: sections 147.36, 148A, 272C.3, and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148A and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:30 to 2:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Virtual video call link: meet.google.com/bfq-qaeb-nwu
Phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 200 sets minimum standards of entry into the professions of physical therapist (PT) and physical therapist assistant (PTA). Iowa residents, licensees and employers benefit from this chapter since it clarifies the processes by which licensees may apply for licensure as physical therapists and physical therapist assistants, as directed in statute. The chapter describes the process that will be used to license physical therapists and physical therapist assistants, including renewal and reinstatement, to ensure public safety through review of the integrity and competence of the practitioner. The chapter describes the application process, educational qualifications, and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to an applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. Licensees have costs related to educational requirements to graduate from a physical therapy program accredited by a national accreditation agency approved by the Board of Physical and Occupational Therapy. The initial license fee for a two-year license to practice to become an Iowa licensed physical therapist and physical therapist assistant is \$175 (which includes a \$120 application for initial licensure and a one-time fee of \$55 for a Federal Bureau of Investigation (FBI) and state criminal background check). Application fees are addressed in rule 645—5.13(147,148A)). Licensees must also pay an examination fee of \$485 for the

National Physical Therapy Examination (NPTE) to the Federation of State Boards of Physical Therapy (FSBPT).

These costs are comparable to surrounding states' licensing fees. Nebraska's two-year license fee is \$178.25 to become a physical therapist and \$135.25 to become a physical therapist assistant (which includes a \$133 PT application for initial licensure, \$90 PTA application for initial licensure, and \$45.25 PT and PTA FBI criminal background check), and the examination fee is \$485 for the NPTE to the FSBPT. Minnesota has an annual license fee of \$243.25 (which includes a \$100 application fee, \$60 annual license, \$50 examination fee per attempt, and one-time fee of \$33.25 for an FBI criminal background check), and the examination fee is \$485 for the NPTE to the FSBPT.

- Classes of persons that will benefit from the proposed rulemaking:

The benefits achieved justify the costs. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners with knowledge of topics pertinent to the profession to ensure the safety and welfare of the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide training for physical therapists and physical therapist assistants. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. Licensing renewal fees are \$60 every two years.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities. This includes reviews at the time of initial application and during reinstatement. Compliance audits are performed randomly on renewed licenses. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensure by consent agreements and discipline imposed by the Board are monitored by office staff. Where appropriate, referrals are made to the impaired practitioner program.

An executive officer supports the full scope of this work at 0.22 full-time equivalent (FTE) position. This includes reviews at the time of initial application and during reinstatement. Compliance audits are performed randomly on renewed licenses. Licensees are selected at random by the licensing software algorithm to complete an annual compliance review per Board, sending out letters/emails and evaluating the documentation provided. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensure by consent agreements and discipline imposed by the Board are monitored by office staff.

This additionally includes answering from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure minimum competency. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. The cost of inaction would increase the potential for injury to the public that would remain unchecked without review prior to initial licensure, periodic compliance audits and complaint investigation. In addition, the chapter provides consistency related to the licensure of physical therapists and physical therapist assistants across the United States and membership in the Physical Therapy Compact requires the uniform licensure of these providers.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the chapter provides consistency related to the licensure of physical therapists and physical therapist assistants across the United States and membership in the Physical Therapy Compact requires the uniform licensure of these providers.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review and compliance audits. The Board believes all current requirements assure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the chapter provides consistency related to the licensure of physical therapists and physical therapist assistants across the United States and membership in the Physical Therapy Compact requires the uniform licensure of these providers.

DIAL continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These revisions support this effort.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to public safety concerns which are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for physical therapists and physical therapist assistants. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 200 and adopt the following new chapter in lieu thereof:

PHYSICAL AND OCCUPATIONAL THERAPISTS

| | |
|-------------|--|
| CHAPTER 200 | LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS |
| CHAPTER 201 | PRACTICE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS |
| CHAPTER 202 | DISCIPLINE FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS |
| CHAPTER 203 | CONTINUING EDUCATION FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS |
| CHAPTER 204 | RESERVED |
| CHAPTER 205 | RESERVED |
| CHAPTER 206 | LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS |
| CHAPTER 207 | CONTINUING EDUCATION FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS |
| CHAPTER 208 | PRACTICE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS |
| CHAPTER 209 | DISCIPLINE FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS |

CHAPTER 200

LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

645—200.1(147) Definitions. For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Assistive personnel*” means any person who carries out physical therapy and is not licensed as a physical therapist or physical therapist assistant. This definition does not include students as defined in Iowa Code section 148A.3(2).

“*Board*” means the board of physical and occupational therapy.

“*Department*” means the department of public health.

“*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.

“*Impairment*” means a mechanical, physiological or developmental loss or abnormality, a functional limitation, or a disability or other health- or movement-related condition.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Licensee*” means any person licensed to practice as a physical therapist or physical therapist assistant in the state of Iowa.

“*License expiration date*” means the fifteenth day of the birth month every two years after initial licensure.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice physical therapy to an applicant who is or has been licensed in another state.

“*Mandatory reporter training*” means the training on identifying and reporting child abuse or dependent adult abuse as required in Iowa Code sections 232.69 and 235B.16.

“*On site*” means:

1. To be continuously on site and present in the department or facility where assistive personnel are performing services;
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 to assistive personnel.

“*Physical therapist*” means a person licensed under this chapter to practice physical therapy.

“*Physical therapist assistant*” means a person licensed under this chapter to assist in the practice of physical therapy.

“*Physical therapy*” means the same as defined within Iowa Code section 148A.1.

“*PT*” means physical therapist.

“*PTA*” means physical therapist assistant.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—200.15(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice physical therapy to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of physical and occupational therapy to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in 645—11.31(272C). Once the license is reinstated, the licensee may apply for active status.

645—200.2(147) Initial licensure.

200.2(1) *Requirements for licensure.* The applicant shall submit a complete online application and pay the nonrefundable fee specified in rule 645—5.13(147,148A).

200.2(2) If the application is not completed according to the instructions, the application will not be reviewed by the board.

200.2(3) Submit official copies of academic transcripts directly from the school to the board of physical and occupational therapy. An applicant shall demonstrate successful completion of a physical therapy education program accredited by a national accreditation agency approved by the board. No application will be considered by the board until official copies of academic transcripts have been received.

200.2(4) Submit a completed fingerprint card and a signed waiver form to facilitate a national criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). The cost of the criminal history background check by the DCI and the FBI shall be assessed to the applicant.

200.2(5) Have the testing service send the examination score directly to the board.

200.2(6) Provide verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose

any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the renewal date license.

200.2(7) A physical therapist or physical therapist assistant applicant who holds a license in another state shall have:

- a. Completed board-approved continuing education during the immediately preceding two-year period: 40 hours required for the physical therapist license holder and 20 hours required for a physical therapist assistant license holder; or
- b. Practiced for a minimum of 2,080 hours during the immediately preceding two-year period; or
- c. Served the equivalent of one year as a full-time faculty member teaching in an accredited school of physical therapy for at least one of the immediately preceding two years; or
- d. Successfully passed the examination within a period of two years from the date of examination to the time application is completed for licensure.

200.2(8) Submitting complete application materials. An application for a physical therapist or physical therapist assistant 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.

200.2(9) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—200.3(147) Physical therapy compact. The rules of the physical therapy compact commission are incorporated by reference. A physical therapist or physical therapist assistant may engage in the practice of physical therapy in Iowa without a license issued by the board if the individual has a current compact privilege to practice in Iowa issued by the physical therapy compact commission. The state fee for issuance of a compact privilege to practice in Iowa shall be \$60, which will be collected by the physical therapy compact commission. The state fee for issuance of a compact privilege to practice in Iowa shall be waived for an active duty military member or spouse of an individual who is an active duty military member. A physical therapist or physical therapist assistant who practices physical therapy in Iowa using a compact privilege is subject to the rules governing licensees in rule 645—200.6(147) and in 645—Chapters 201 and 202. Complaints, investigations, and disciplinary proceedings involving a compact privilege shall be handled in accordance with Iowa Code chapters 17A and 272C; 2018 Iowa Acts, House File 2425; and the rules in 645—Chapters 9, 11, 12, and 13.

645—200.4(147) Examination requirements for physical therapists and physical therapist assistants. The following criteria shall apply to the written examination(s):

200.4(1) Evidence of having passed the National Physical Therapy Examination (NPTE) or other nationally recognized equivalent examination as defined by the board.

200.4(2) The applicant shall abide by the following criteria:

- a. For examinations taken prior to July 1, 1994, satisfactory completion shall be defined as receiving an overall examination score exceeding 1.5 standard deviations below the national average.
- b. For examinations completed after July 1, 1994, satisfactory completion shall be defined as receiving an overall examination score equal to or greater than the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

200.4(3) The Federation of State Boards of Physical Therapy (FSBPT) determines the total number of times an applicant may take the examination in a lifetime. The board will not approve an applicant for

testing when the applicant has exhausted the applicant's lifetime opportunities for taking the examination, as determined by FSBPT.

200.4(4) Special accommodations. To eliminate discrimination and guarantee fairness under Title II of the Americans with Disabilities Act (ADA), an individual who has a qualifying disability may request an examination accommodation. The applicant must submit appropriate documentation to FSBPT.

645—200.5(147) Educational qualifications.

200.5(1) The applicant must present proof of meeting the following requirements for licensure as a physical therapist or physical therapist assistant:

a. Educational requirements—physical therapists. Physical therapists shall graduate from a physical therapy program accredited by a national accreditation agency approved by the board.

b. Educational requirements—physical therapist assistants. Physical therapist assistants shall graduate from a PTA program accredited by a national accreditation agency approved by the board.

200.5(2) Foreign-trained applicants.

a. Foreign-trained applicants who do not hold a license in another state or U.S. territory shall:

(1) Submit an English translation and an equivalency evaluation of their educational credentials through the following organization: Foreign Credentialing Commission on Physical Therapy, Inc., 124 West Street South, Third Floor, Alexandria, VA 22314; telephone 703.684.8406; website www.fccpt.org. The credentials of a foreign-educated physical therapist or foreign-educated physical therapist assistant licensure applicant who does not hold a license in another state or territory of the United States and is applying for licensure by taking the examination should be evaluated using the most current version of the Federation of State Boards of Physical Therapy (FSBPT) Coursework Tool (CWT). The professional curriculum must be equivalent to the Commission on Accreditation in Physical Therapy Education standards. An applicant shall bear the expense of the curriculum evaluation.

(2) Submit certified proof of proficiency in the English language by achieving on the Test of English as a Foreign Language Internet-based test (TOEFL iBT test) a total score of at least 89 on the TOEFL iBT test as well as accompanying minimum scores in the four test components as follows: 24 in writing; 26 in speaking; 21 in reading; and 18 in listening. This test is administered by Educational Testing Services, Inc., P.O. Box 6157, Princeton, NJ 08541-6157. An applicant shall bear the expense of the TOEFL iBT test. Applicants may be exempt from the TOEFL iBT test when physical therapy education was completed in a school where the language of instruction in physical therapy was English, the language of the textbooks was English, and the applicant's transcript was in English.

b. Foreign-trained applicants who hold a license in another state or U.S. territory may apply for licensure by endorsement.

645—200.6 Reserved.

645—200.7(147) License renewal.

200.7(1) The biennial license renewal period for a license to practice as a physical therapist or physical therapist assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

200.7(2) 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.

200.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—203.2(148A) and the mandatory reporting requirements of subrule 200.9(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.

200.7(4) Mandatory reporter training requirements.

a. A licensee who is required by Iowa Code section 232.69 to report child abuse shall indicate on the renewal application completion of training in child abuse identification and reporting as required by Iowa Code section 232.69(3) “*b*” in the previous three years or condition(s) for waiver of this requirement as identified in paragraph “*e*.”

b. A licensee who is required by Iowa Code section 235B.3 or 235E.2 to report dependent adult abuse shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) “*b*” in the previous three years or condition(s) for waiver of this requirement as identified in paragraph “*e*.”

c. The course(s) shall be the curriculum provided by the Iowa department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs “*a*” to “*c*,” including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “*a*” to “*e*.”

200.7(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

200.7(6) Persons licensed to practice as physical therapists or physical therapist assistants shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

200.7(7) Late renewal. The license shall become a late license when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.13(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

200.7(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a physical therapist or a physical therapist assistant in Iowa until the license is reactivated. A licensee who practices as a physical therapist or a physical therapist assistant in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—200.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

200.8(1) Submit a reactivation application on a form provided by the board.

200.8(2) Pay the reactivation fee that is due as specified in 645—subrule 5.13(5).

200.8(3) Provide verification of current competence to practice physical therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in

any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 20 hours of continuing education for a physical therapy assistant and 40 hours of continuing education for a physical therapist within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education for a physical therapy assistant and 80 hours of continuing education for a physical therapist within two years of application for reactivation; verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation; or evidence of successful completion of the professional examination required for initial licensure completed within one year prior to the submission of an application for reactivation.

645—200.9(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—200.15(17A,147,272C) prior to practicing physical therapy in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148A and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 201
“Practice of Physical Therapists and Physical Therapist Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 148A, 272C.3, and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148A and
272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:30 to 2:50 p.m.

6200 Park Avenue
Video call link: meet.google.com/bfq-qaeb-nwu
Des Moines, Iowa
More phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 201 provides Iowans, licensees, and their employers with practice guidance and requirements for physical therapists and physical therapist assistants. The chapter provides guidance on what is considered appropriate and what is not appropriate practice. Categories include recordkeeping, ethical practice standards, and telehealth visits. The chapter also describes allowed delegation by a supervising physical therapist.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public; licensees may incur costs related to recordkeeping, ethical practice standards, telehealth visits and supervision requirements. Licensees will be responsible for the costs associated with meeting these practice requirements. The Board of Physical and Occupational Therapy recognizes that there are costs associated but is unable to assess the actual cost.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of the practice standard regulations is to ensure public safety and maintain a high level of care for Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board does not have data on the actual costs of implementing the practice standards. The Board has not identified a more cost-effective alternative to the current complaint investigation process.

Practice standards (recordkeeping, code of ethics, telehealth and delegation of supervision requirements) could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting public health and safety of Iowans.

- Qualitative description of impact:

Establishing minimum practice standard requirements ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public that would remain unchecked without a basic understanding of recordkeeping, code of ethics, telehealth and delegation of supervision requirements as outlined in the chapter, as well as complaint investigation.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes investigation of complaints with letters, phone calls and in-person interviews.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing practice standard regulations are paid to private entities that provide the necessary technology for the licensees to comply with telehealth requirements.

Costs to the agency are the staff time needed to manage Board activities. An executive officer supports the full scope of this work at 0.22 full time-equivalent (FTE) position. This additionally includes answering questions from the public and licensees about items such as practice standards, including the code of ethics, recordkeeping, telehealth and delegation of supervision as well as related education requirements, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There would be a loss of revenue for the private industries that provide the equipment and supplies necessary to implement telehealth practices.

Practice standard requirements could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting public health and safety of Iowans.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current complaint investigation process. Practice standard requirements could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting public health and safety of Iowans.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current practice standard requirements that would ensure the same level of safety of Iowans.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The Board believes that eliminating the practice standard requirements would increase the number of injuries to the public.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The chapter is meant to ensure public safety in terms of recordkeeping, code of ethics, telehealth and delegation of supervision requirements. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 201 and adopt the following **new** chapter in lieu thereof:

CHAPTER 201
PRACTICE OF PHYSICAL THERAPISTS
AND PHYSICAL THERAPIST ASSISTANTS

645—201.1(148A,272C) Code of ethics for physical therapists and physical therapist assistants.

- 201.1(1)** Physical therapy. The practice of physical therapy shall minimally consist of:
- a. Interpreting all referrals;
 - b. Evaluating each patient;
 - c. Identifying and documenting individual patient's problems and goals;
 - d. Establishing and documenting a plan of care;
 - e. Providing appropriate treatment;
 - f. Determining the appropriate portions of the treatment program to be delegated to assistive personnel;
 - g. Appropriately supervising individuals as described in rule 645—200.6(272C);
 - h. Providing timely patient reevaluation;
 - i. Maintaining timely and adequate patient records of all physical therapy activity and patient responses consistent with the standards found in rule 645—201.2(147).
- 201.1(2)** A physical therapist shall:
- a. Not practice outside the scope of the license;
 - b. Inform a referring practitioner when any requested treatment procedure is inadvisable or contraindicated and shall refuse to carry out such orders;

- c.* Not continue treatment beyond the point of possible benefit to the patient or treat a patient more frequently than necessary to obtain maximum therapeutic effect;
- d.* Not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or refunding of an unearned fee;
- e.* Not profit by means of credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of physical therapy services;
- f.* Not obtain third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:
 - (1) Reporting incorrect treatment dates for the purpose of obtaining payment;
 - (2) Reporting charges for services not rendered;
 - (3) Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or
 - (4) Aiding a patient in fraudulently obtaining payment from a third-party payer;
- g.* Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the physical therapist owns stock or has any other direct or indirect financial interest;
- h.* Not permit another person to use the therapist's license for any purpose;
- i.* Not verbally or physically abuse a patient or client;
- j.* Not engage in sexual misconduct. Sexual misconduct includes the following:
 - (1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient or client;
 - (2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient or client;
- k.* Adequately supervise personnel in accordance with the standards for supervision found in rule 645—200.6(272C);
- l.* Assist in identifying a professionally qualified licensed practitioner to perform the service, in the event that the physical therapist does not possess the skill to evaluate a patient, plan the treatment program, or carry out the treatment.

201.1(3) Physical therapist assistants. A physical therapist assistant shall:

- a.* Not practice outside the scope of the license;
- b.* Not obtain third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:
 - (1) Reporting incorrect treatment dates for the purpose of obtaining payment;
 - (2) Reporting charges for services not rendered;
 - (3) Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or
 - (4) Aiding a patient in fraudulently obtaining payment from a third-party payer;
- c.* Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the physical therapist assistant owns stock or has any other direct or indirect financial interest;
- d.* Not permit another person to use the physical therapist's or physical therapist assistant's license for any purpose;
- e.* Not verbally or physically abuse a patient or client;
- f.* Not engage in sexual misconduct. Sexual misconduct includes the following:
 - (1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient or client; and
 - (2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient or client;
- g.* Work only when supervised by a physical therapist and in accordance with rule 645—200.6(272C). If the available supervision does not meet the standards in rule 645—200.6(272C), the physical therapist assistant shall refuse to administer treatment;

- h.* Inform the delegating physical therapist when the physical therapist assistant does not possess the skills or knowledge to perform the delegated tasks, and refuse to perform the delegated tasks;
- i.* Sign the physical therapy treatment record to indicate that the physical therapy services were provided in accordance with the rules and regulations for practicing as a physical therapist or physical therapist assistant.

645—201.2(147) Recordkeeping.

201.2(1) A licensee shall maintain sufficient, timely, and accurate documentation in patient records. A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

201.2(2) A licensee who provides clinical services shall store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all patient records for a minimum of five years after the date of the patient's discharge, or, in the case of a minor, three years after the patient reaches the age of majority under state law or five years after the date of discharge, whichever is longer.

201.2(3) Electronic recordkeeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

201.2(4) Correction of records.

a. Hard-copy records. Notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

201.2(5) Confidentiality and transfer of records. Physical therapists and physical therapist assistants shall preserve the confidentiality of patient records. Upon receipt of a written release or authorization signed by the patient, the licensee shall furnish such physical therapy records, or copies of the records, as will be beneficial for the future treatment of that patient. A fee may be charged for duplication of records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

201.2(6) Retirement or discontinuance of practice. If a licensee is the owner of a practice, the licensee shall notify in writing all active patients and shall make reasonable arrangements with those patients to transfer patient records, or copies of those records, to the succeeding licensee upon knowledge and agreement of the patient.

201.2(7) Nothing stated in these rules shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed individual who is assuming a practice, provided that written notice is furnished to all patients.

645—201.3(147) Telehealth visits. A licensee may provide physical therapy services to a patient utilizing a telehealth visit if the physical therapy services are provided in accordance with all requirements of this chapter.

201.3(1) "Telehealth visit" means the provision of physical therapy services by a licensee to a patient using technology where the licensee and the patient are not at the same physical location for the physical therapy session.

201.3(2) A licensee engaged in a telehealth visit shall utilize technology that is secure and HIPAA-compliant and that includes, at a minimum, audio and video equipment that allows two-way real-time interactive communication between the licensee and the patient. A licensee may use non-real-time technologies to prepare for a physical therapy session or to communicate with a patient between physical therapy sessions.

201.3(3) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person physical therapy. A licensee shall not utilize a telehealth visit if the standard of care for the particular physical therapy services cannot be met using technology.

201.3(4) Any physical therapist or physical therapist assistant who provides a physical therapy telehealth visit to a patient located in Iowa shall be licensed in Iowa or have a compact privilege issued by the physical therapy compact commission.

201.3(5) Prior to the first telehealth visit, a licensee shall obtain informed consent from the patient specific to the physical therapy services that will be provided in a telehealth visit. At a minimum, the informed consent shall specifically inform the patient of the following:

- a. The risks and limitations of the use of technology to provide physical therapy services;
- b. The potential for unauthorized access to protected health information; and
- c. The potential for disruption of technology during a telehealth visit.

201.3(6) A licensee shall only provide physical therapy services using a telehealth visit in the areas of competence wherein proficiency in providing the particular service using technology has been gained through education, training, and experience.

201.3(7) A licensee shall identify in the clinical record when physical therapy services are provided utilizing a telehealth visit.

645—201.4(147) Delegation by a supervising physical therapist. A supervising physical therapist may delegate the performance of physical therapy services to a physical therapist assistant only if done in accordance with the statutes and rules governing the practice of physical therapy. A physical therapist assistant may assist in the practice of physical therapy only to the extent allowed by the supervising physical therapist. The supervisory requirements stated in this rule are minimal. It is the professional responsibility and duty of the supervising physical therapist to provide the physical therapist assistant with more supervision if deemed necessary in the supervising physical therapist's professional judgment.

201.4(1) *Supervision requirements.* A supervising physical therapist who delegates the performance of physical therapy services to a physical therapist assistant shall provide supervision to the physical therapist assistant at all times when the physical therapist assistant is providing delegated physical therapy services. Supervision means that the physical therapist shall be readily available on site or telephonically anytime the physical therapist assistant is providing physical therapy services so that the physical therapist assistant may contact the physical therapist for advice, assistance, or instruction.

201.4(2) *Functions that cannot be delegated.* The following are functions that only a physical therapist may provide and that cannot be delegated to a physical therapist assistant:

- a. Interpretation of referrals;
- b. Initial physical therapy evaluation and reevaluations;
- c. Identification, determination, or modification of patient problems, goals, and plans of care;
- d. Final discharge evaluation and establishment of a discharge plan;
- e. Delegation of and instruction in the physical therapy services to be rendered by a physical therapist assistant or unlicensed assistive personnel including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures; and
- f. Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated.

201.4(3) *Physical therapist responsibilities.* At all times, the supervising physical therapist shall be responsible for the physical therapy plan of care and for all physical therapy services provided, including all physical therapy services delegated to a physical therapist assistant. In addition, the supervising physical therapist shall:

- a. Be responsible for the evaluation and development of a plan of care for use by the physical therapist assistant; and
- b. Not delegate a physical therapy service that exceeds the competency or skill set of the physical therapist assistant; and
- c. Ensure that a physical therapist assistant holds an active physical therapist assistant license issued by the board or a compact privilege; and

- d.* Ensure that a physical therapist assistant is aware of how the supervising physical therapist can be contacted telephonically or by virtual means when the physical therapist is not providing on-site supervision; and
- e.* Arrange for an alternate physical therapist to provide supervision when the physical therapist has scheduled or unscheduled absences during time periods in which a physical therapist assistant will be providing delegated physical therapy services; and
- f.* Ensure that a physical therapist assistant is informed when a patient's plan of care is transferred to a different supervising physical therapist; and
- g.* Directly participate in physical therapy services upon the physical therapist assistant's request for a reexamination, when a change in the plan of care is needed, prior to any planned discharge, and in response to a change in the patient's medical status; and
- h.* Hold regularly scheduled meetings with the physical therapist assistant to evaluate the physical therapist assistant's performance, assess the progress of a patient, and make changes to the plan of care as needed. The frequency of meetings should be determined by the supervising physical therapist based on the needs of the patient, the supervisory needs of the physical therapist assistant, and any planned discharge. The supervising physical therapist shall provide direction and instruction to the physical therapist assistant that are adequate to ensure the safety and welfare of the patient.

201.4(4) *Physical therapist assistant responsibilities.* A physical therapist assistant shall only provide physical therapy services under the supervision of a physical therapist. In addition, the physical therapist assistant shall:

- a.* Only provide physical therapy services that have been delegated by the supervising physical therapist; and
- b.* Only provide physical therapy services that are within the competency and skill set of the physical therapist assistant; and
- c.* Consult the supervising physical therapist if the physical therapist assistant believes that any procedure is not in the best interest of the patient; and
- d.* Contact the supervising physical therapist regarding any change or lack of change in a patient's condition that may require assessment by the supervising physical therapist; and
- e.* Refer inquiries that require interpretation to the supervising physical therapist; and
- f.* Ensure that the identification of the supervising physical therapist is included in the documentation for any visit when physical therapy services were provided by the physical therapist assistant; and
- g.* Only sign a treatment record if the provision of physical therapy services was done in accordance with the statutes and rules governing the practice of a physical therapist assistant.

201.4(5) *Ratio.* A physical therapist shall determine the number of physical therapist assistants who can be supervised safely and competently and shall not exceed that number; but in no case shall a physical therapist supervise more than four physical therapist assistants per calendar day. A physical therapist assistant who performs any delegated physical therapy services on behalf of the supervising physical therapist on a particular day shall be counted in determining the maximum ratio, regardless of the location of the physical therapist assistant or the number of patients treated.

201.4(6) *Minimum frequency of direct participation by a supervising physical therapist.* A supervising physical therapist shall use professional judgment to determine how frequently the physical therapist needs to directly participate in physical therapy services when delegating to a physical therapist assistant, the frequency of which shall be based on the needs of the patient. Direct participation can occur through an in-person or telehealth visit. The supervising physical therapist shall ensure that the patient record clearly indicates which visits included direct participation by the supervising physical therapist. The following are the minimum standards, which are expected to be exceeded when dictated by the supervising physical therapist's professional judgment, for the required frequency of direct participation by the supervising physical therapist when physical therapy services involve delegation to a physical therapist assistant:

a. Hospital inpatient and skilled nursing. For hospital inpatients and skilled nursing patients, a supervising physical therapist must directly participate in physical therapy services a minimum of once per calendar week. A calendar week is defined as Sunday through Saturday.

b. All other settings. In all other settings, a supervising physical therapist must directly participate in the provision of physical therapy services at least every eighth visit or every 30 calendar days, whichever comes first.

201.4(7) Unlicensed assistive personnel. A physical therapist is responsible for patient care provided by unlicensed assistive personnel under the physical therapist's supervision. A physical therapist is responsible for ensuring the qualifications of any unlicensed assistive personnel and shall maintain written documentation of their education or training. Unlicensed assistive personnel may assist a physical therapist assistant in the delivery of physical therapy services only if the physical therapist assistant maintains in-sight supervision of the unlicensed assistive personnel and the physical therapist assistant is primarily and significantly involved in the patient's care. Unlicensed assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

a. The physical therapist has direct participation in the patient's treatment or evaluation, or both, each treatment day;

b. Unlicensed assistive personnel may provide independent patient care only while under the on-site supervision of the physical therapist;

c. Documentation made in a physical therapy record by unlicensed assistive personnel shall be cosigned by the physical therapist; and

d. The physical therapist provides periodic reevaluation of any unlicensed assistive personnel's performance in relation to the patient.

These rules are intended to implement Iowa Code chapters 147, 148A and 272C.

Regulatory Analysis

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“Discipline for Physical Therapists and Physical Therapist Assistants”

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400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 202 defines actions that are inconsistent with professional standards for licensees, which are established to protect the consumer and colleagues. Actions inconsistent with professional standards could result in disciplinary actions against a practitioner’s license.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the physical therapist and physical therapist assistant licensees and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are associated with costs to the licensed professional. Licensees may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fine amounts are not established in rule for these licensees and are determined by the Board of Physical and Occupational Therapy. The Board has statutory authority to impose a civil penalty on individuals practicing without a license.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed chapter since there is clarity on compliance and potential consequences for noncompliance. The benefit is being achieved since the Board had 15

founded violations between 2015 and 2023. The low number of public discipline cases demonstrates the effectiveness of the continuing education requirements in ensuring licensees are remaining current in their professional knowledge and providing quality care to Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes the benefits achieved justify the costs because the cost of inaction would increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline. Fees incurred by the professional are up to \$1,000 per violation.

The Board has not identified a more cost-effective alternative to the current discipline process. There could be a consideration of reducing or eliminating grounds for discipline, but the Board believes these requirements are important in order to protect the public from infection risks.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee takes action that is grounds for discipline. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer, licensure specialist and investigator support the full scope of this work at 0.22 full-time equivalent (FTE) position. This additionally includes answering questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The amount of complaints received are relatively low, and costs reflect that. The Board believes the costs are justified because inaction could increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline. The benefit of protecting the public justifies the costs to review and address the standards of professional behavior.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

The Iowa Boards and Commissions Review Committee recommended consolidating the Board of Physical and Occupational Therapy with Athletic Training, Chiropractic and Massage Therapy.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

While there has been some standardization of consideration of criminal convictions, the Board has not recommended a less restrictive alternative to public protection.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the physical therapist and physical therapist assistant licensees and are therefore excluded from the general disciplinary chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 202 and adopt the following **new** chapter in lieu thereof:

CHAPTER 202

DISCIPLINE FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

645—202.1(148A) Definitions.

“*Board*” means the board of physical and occupational therapy.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice in Iowa pursuant to Iowa Code chapter 148A and 645—Chapters 200 to 203.

645—202.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that any of the acts or offenses listed in such rule or in Iowa Code section 147.55 have occurred:

202.2(1) Professional incompetency. Professional 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 physical therapists or physical therapist assistants in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average physical therapist or physical therapist assistant acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of the licensed physical therapist or licensed physical therapist assistant 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.

202.2(2) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of physical therapy or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

202.2(3) Violation of a regulation, rule or law of this state, another state, or the United States which relates to the practice of physical therapy, including, but not limited to, the code of ethics found in rule 645—201.1(148A,272C).

202.2(4) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of physical therapy in another state, district, territory or country.

202.2(5) Knowingly aiding, assisting or advising a person to unlawfully practice physical therapy.

202.2(6) Representing oneself as a licensed physical therapist or physical therapist assistant when one's license has been suspended or revoked, or when the license is on inactive status.

These rules are intended to implement Iowa Code chapters 147, 148A and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 203
“Continuing Education for Physical Therapists and Physical Therapist Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: No answer provided
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:30 to 2:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Iowa Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 203 sets forth continuing education requirements for physical therapists (PTs) and physical therapist assistants (PTAs). It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that licensees stay up to date with laws, rules and industry standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Iowa requires physical therapists to complete 40 hours of continuing education every two years and a physical therapist assistant to complete 20 hours of continuing education every two years. The cost to obtain continuing education courses are often priced “per course” versus “per contact hour.” An on-demand one-hour online course covering a general topic that meets these requirements of a licensure board could be free, while in-person multiday courses presented by one or more subject matter experts tend to be more expensive. There are multiple entities that offer continuing education courses to licensees, both online and in person.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that physical therapists and physical therapist assistants maintain up-to-date knowledge on industry-related skills and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry offers these courses, so the Board of Physical and Occupational Therapy is not privy to exact costs. Based on research estimates, the cost to obtain continuing education is quite variable depending on the focus of the practitioner. The cost to obtain continuing education courses are often priced “per course” versus “per contact hour.” An on-demand one-hour online course covering a general topic that meets these requirements of a licensure board could be free, while in-person multiday courses presented by one or more subject matter experts tend to be more expensive. There are multiple entities that offer continuing education courses to licensees, both online and in person.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures that licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities at approximately 0.22 full-time equivalent (FTE) position, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. This includes answering questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board does not recommend a change in continuing education hours at this time. Iowa’s requirements for physical therapists to complete 40 continuing education hours and physical therapist assistants to complete 20 continuing education hours every two years is consistent with neighboring states of Kansas (40 PT/20 PTA) and Illinois (40 PT/20 PTA), while it is slightly higher than Nebraska (30 PT/30 PTA), Missouri (24 PT/24 PTA), Minnesota (20 PT/20 PTA) and South Dakota (15 PT/15 PTA).

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less restrictive alternative would be to reduce the amount of continuing education required. The Board does not recommend a change in continuing education hours at this time. Iowa’s continuing education requirements are in line with neighboring states and the BOC certification. Iowa’s requirements for physical therapists to complete 40 continuing education hours and physical therapist assistants to complete 20 continuing education hours every two years is consistent with neighboring states of Kansas (40 PT/20 PTA) and Illinois (40 PT/20 PTA), while it is slightly higher than Nebraska

(30 PT/30 PTA), Missouri (24 PT/24 PTA), Minnesota (20 PT/20 PTA) and South Dakota (15 PT/15 PTA).

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring if the Board would recommend lowering the continuing education requirements. The Board does not recommend a change in continuing education hours at this time.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 203 and adopt the following **new** chapter in lieu thereof:

CHAPTER 203 CONTINUING EDUCATION FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

645—203.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Audit*” means the selection of licensees for verification of continuing education requirements.

“*Board*” means the board of physical and occupational therapy.

“*Continuing education*” means the same as the definition in Iowa Code section 272C.1.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously and that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a physical therapist or physical therapist assistant in the state of Iowa.

645—203.2(148A) Continuing education requirements.

203.2(1) The biennial continuing education compliance period shall extend for a two-year period that begins on the sixteenth day of the birth month and ends two years later on the fifteenth day of the birth month.

a. Requirements for physical therapist licensees. Each biennium, each person who is licensed to practice as a physical therapist in this state will be required to complete a minimum of 40 hours of continuing education approved by the board.

b. Requirements for physical therapist assistant licensees. Each biennium, each person who is licensed to practice as a physical therapist assistant in this state will be required to complete a minimum of 20 hours of continuing education approved by the board.

203.2(2) Requirements of 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 40 hours of continuing education per biennium for physical therapists and a minimum of 20 hours for physical therapist assistants each subsequent license renewal.

203.2(3) No hours of continuing education shall be carried over into the next biennium except for a new licensee. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

645—203.3(148A,272C) Standards.

203.3(1) *General criteria.* Appropriate continuing education activity for purposes of license renewal will support each of the following:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program.

At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

203.3(2) *Specific criteria.*

a. Licensees may obtain continuing education hours of credit by:

(1) Attending workshops, conferences, or symposiums.

(2) Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.

(3) Completing an American Physical Therapy Association-approved postprofessional clinical residency or fellowship. A licensee will receive 1 hour of credit for every 2 hours spent in clinical

residency, up to a maximum of 20 hours. Clinical residency hours may not be used for credit if the licensee is also seeking credit hours earned for postprofessional academic coursework in the same renewal period.

(4) Directly supervising students for clinical education if the students being supervised are from an accredited physical therapist or physical therapist assistant program and are participating in a full-time clinical experience (defined as approximately 40 hours per week, ranging from 1 to 18 weeks). One hour will be awarded for every 160 contact hours of supervision. A maximum of 8 hours for a physical therapist and 4 hours for a physical therapist assistant may be awarded per biennium. The physical therapist or physical therapist assistant must have documentation from the accredited educational program indicating the number of hours spent supervising a student.

(5) Presenting professional programs that meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation for the first offering of the course. A course schedule or brochure must be maintained for audit.

(6) Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of physical therapy will be necessary in order for the licensee to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(7) Teaching in an approved college, university, or graduate school. The licensee may receive the following continuing education credits on a one-time basis for the first offering of a course:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(8) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

(9) Participating in professional organizations related to the practice of physical therapy, with 1 credit hour received for each six months of active service as an officer, delegate, or committee member, for a maximum of 4 hours of credit per biennium. Verification of participation must be provided by the professional organization to document the continuing education credit.

b. Continuing education hours of credit in the following topics are not considered to be directly and primarily related to the clinical application of physical therapy and therefore must not exceed a maximum combined total of 10 hours of credit for a physical therapist licensee and 5 hours of credit for a physical therapist assistant licensee:

(1) Business-related topics, such as marketing, time management, government regulations, and other like topics.

(2) Personal skills topics, such as career burnout, communication skills, human relations, and other like topics.

(3) General health topics, such as clinical research, CPR, mandatory reporter training, and other like topics.

These rules are intended to implement Iowa Code section 272C.2 and chapter 148A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 206
“Licensure of Occupational Therapists and Occupational Therapy Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 148B, 272C.3, 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148B and
272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:30 to 2:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qacb-nwu
Phone numbers:
[tel.meet/bfq-qacb-nwu?pin=7324359836726](tel:meet/bfq-qacb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 206 sets minimum standards of entry into the professions of occupational therapist and occupational therapy assistant. Iowa residents, licensees and employers benefit from the chapter since it clarifies the processes by which licensees may apply for licensure as occupational therapists and occupational therapy assistants, as directed in statute. The chapter publicly illustrates the process that will be used to license occupational therapists and occupational therapy assistants, including renewal and reinstatement, to ensure public safety through review of the integrity and competence of the practitioner. The chapter describes the application process, educational qualifications, and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant because complying with the minimum requirements to enter into the profession is at the expense of the licensee. Licensees have costs related to educational requirements to graduate from an occupational therapy program approved by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association. The initial license fee for a two-year license to practice to become an Iowa-licensed occupational therapist or occupational therapy assistant is \$120 (application fees are addressed in rule 645—5.11(147,148B)). Licensees must also pay an examination fee of \$515 to the National Board for Certification in Occupational Therapy (NBCOT).

These costs are comparable to surrounding states' licensing fees. Nebraska's two-year license fee is \$135.50 to become an occupational therapist or an occupational therapy assistant (includes \$135.50 application for initial licensure and \$15.50 FBI criminal background check) and an examination fee of \$515 to the National Board for Certification in Occupational Therapy (NBCOT). Minnesota's two-year license fee for is \$218.25 for an occupational therapist (includes \$185 application fee and \$33.25 Federal Bureau of Investigation (FBI) criminal background check) and \$138.25 for an occupational therapy assistant (includes \$105 application fee and \$33.25 FBI criminal background check) and an examination fee of \$515 to the NBCOT.

- Classes of persons that will benefit from the proposed rulemaking:

The benefits achieved justify the costs. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board of Physical and Occupational Therapy believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners with knowledge of topics pertinent to the profession to ensure the safety and welfare of the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide training for occupational therapists and occupational therapist assistants. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. Licensing renewal fees are \$60 every two years.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities. This includes reviews at the time of initial application and during reinstatement. Compliance audits are performed randomly on renewed licenses. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensure by consent agreements and discipline imposed by the Board are monitored by office staff.

An executive officer supports the full scope of this work at 0.22 full-time equivalent (FTE) position. This includes reviews at the time of initial application and during reinstatement. Compliance audits are performed randomly on renewed licenses. Licensees are selected at random by the licensing software algorithm to complete an annual compliance review per board, sending out letters/emails and evaluating the documentation provided. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensure by consent agreements and discipline imposed by the Board are monitored by office staff.

This additionally includes answering from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure minimum competency. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. The cost of inaction would increase the potential for injury to the public that would remain unchecked without review prior to initial licensure, periodic compliance audits and complaint investigation. In addition, the chapter provides consistency related to the licensure of occupational therapists and occupational therapy assistants across the United States, and membership in the Occupational Therapy Compact requires the uniform licensure of these providers.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the chapter provides consistency related to the licensure of occupational therapists and occupational therapy assistants across the United States, and membership in the Occupational Therapy Compact requires the uniform licensure of these providers.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review and compliance audits. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the chapter provides consistency related to the licensure of occupational therapists and occupational therapy assistants across the United States, and membership in the Occupational Therapy Compact requires the uniform licensure of these providers.

DIAL continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to public safety concerns which are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for occupational therapists and occupational therapy assistants. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 206 and adopt the following new chapter in lieu thereof:

CHAPTER 206
LICENSURE OF OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS

645—206.1(147) Definitions. For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of physical and occupational therapy.

“*Department*” means the department of public health.

“*Endorsement*” means the issuance of an Iowa license to practice occupational therapy to an applicant who is currently licensed in another state who has the same or similar qualifications to those required in Iowa.

“*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 include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as an occupational therapist or occupational therapy assistant in the state of Iowa.

“*License expiration date*” means the fifteenth day of the birth month every two years after initial licensure.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice occupational therapy to an applicant who is or has been licensed in another state.

“*Licensure examination*” means the examination administered by the National Board for Certification in Occupational Therapy.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse as required in Iowa Code sections 232.69 and 235B.16.

“*NBCOT*” means the National Board for Certification in Occupational Therapy.

“*Occupational therapist*” means a person licensed under this chapter to practice occupational therapy.

“*Occupational therapy assistant*” means a person licensed under this chapter to assist in the practice of occupational therapy.

“*Occupational therapy practice*” means the same as defined within Iowa Code section 148B.2.

“Occupational therapy screening” means a brief process which is directed by an occupational therapist in order for the occupational therapist to render a decision as to whether the individual warrants further, in-depth evaluation and which includes:

1. Assessment of the medical and social history of an individual;
2. Observations related by that individual’s caregivers; or
3. Observations or nonstandardized tests, or both, administered to an individual by the occupational therapist or an occupational therapy assistant under the direction of the occupational therapist.

Nothing in this definition shall be construed to prohibit licensed occupational therapists and occupational therapy assistants who work in preschools or school settings from providing short-term interventions to children prior to an evaluation, not to exceed 16 sessions per concern per school year, in accordance with state and federal educational policy.

“On site” means:

1. To be continuously on site and present in the department or facility where the assistive personnel are performing services;
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 to assistive personnel.

“OT” means occupational therapist.

“OTA” means occupational therapy assistant.

“Reactivate” or *“reactivation”* means the process as outlined in rule 645—206.11(17A,147,272C) by which an inactive license is restored to active status.

“Reciprocal license” means the issuance of an Iowa license to practice occupational therapy to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of physical and occupational therapy to license persons who have the same or similar qualifications to those required in Iowa.

“Reinstatement” means the process as outlined in rule 645—11.31(272C). Once the license is reinstated, the licensee may apply for active status.

645—206.2(147) Initial licensure. The following criteria shall apply to licensure:

206.2(1) Requirements for licensure. The applicant shall:

a. Submit a complete online application and pay the nonrefundable fee specified in rule 645—5.11(147,148B).

b. Submit an official copy of academic transcripts directly from the school to the board. No application will be considered by the board until official copies of academic transcripts have been received.

c. Direct the examination service to submit examination scores directly to the board.

d. Provide 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 it provides:

- (1) Licensee’s name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

206.2(2) Reserved.

645—206.3(147) An occupational therapist or occupational therapy assistant applicant who holds a license in another state shall have:

206.3(1) Completed board-approved continuing education during the immediately preceding two-year period: 30 hours for an occupational therapist and 15 hours for an occupational therapy assistant, or

206.3(2) Practiced for a minimum of 2,080 hours during the immediately preceding two-year period;
or

206.3(3) Served the equivalent of one year as a full-time faculty member teaching in an accredited school of occupational therapy for at least one of the immediately preceding two years; or

206.3(4) Successfully passing the examination within a period of two years from the date of examination to the time application is completed for licensure.

645—206.4(147) Limited permit to practice pending licensure. A limited permit holder who is applying for licensure in Iowa by taking the licensure examination for the first time and has never been licensed as an occupational therapist or occupational therapy assistant in any state, the District of Columbia, or another country must have completed the educational and experience requirements for licensure as an occupational therapist or occupational therapy assistant. The limited permit holder shall:

1. Make arrangements to take the examination and have the official results of the examination sent directly from the examination service to the board;

2. Apply for licensure on forms provided by the board. The applicant must include on the application form the name of the Iowa-licensed occupational therapist(s) who will provide supervision of the limited permit holder until the limited permit holder is licensed;

3. Practice only under the supervision of an Iowa-licensed OT for a period not to exceed six months from the date the application was received in the board office;

4. Submit to the board the name of the OT providing supervision within seven days after a change in supervision occurs; and

5. If the applicant fails the national examination, the limited permit holder must cease practicing immediately.

645—206.5(147) Examination requirements. The following criteria shall apply to the written examination(s):

206.5(1) The applicant for licensure as an occupational therapist shall have received a passing score on the licensure examination for occupational therapists. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted directly from the examination service to the board of physical and occupational therapy.

206.5(2) The applicant for licensure as an occupational therapy assistant shall have received a passing score on the licensure examination for occupational therapy assistants. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted directly from the examination service to the board of physical and occupational therapy.

645—206.6(147) Educational qualifications.

206.6(1) The applicant must present proof of meeting the following requirements for licensure as an occupational therapist or occupational therapy assistant:

a. Occupational therapist. The applicant for licensure as an occupational therapist shall have completed the requirements for a degree in occupational therapy in an occupational therapy program accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association. The transcript shall show completion of a supervised fieldwork experience.

b. Occupational therapy assistant. The applicant for licensure as an occupational therapy assistant shall be a graduate of an educational program approved by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association. The transcript shall show completion of a supervised fieldwork experience.

206.6(2) Foreign-trained occupational therapists and occupational therapy assistants. To become eligible to take the licensure examination, internationally educated occupational therapists must meet NBCOT eligibility requirements and undergo prescreening based on the status of their occupational therapy educational programs.

645—206.7(147) License renewal.

206.7(1) The biennial license renewal period for a license to practice as an occupational therapist or occupational therapy assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

206.7(2) 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.

206.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—207.2(272C) and the mandatory reporting requirements of subrule 206.12(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education 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.

206.7(4) Mandatory reporter training requirements.

a. A licensee who is required by Iowa Code section 232.69 to report child abuse shall indicate on the renewal application completion of training in child abuse identification and reporting as required by Iowa Code section 232.69(3) “*b*” in the previous three years or condition(s) for waiver of this requirement as identified in paragraph “*e*.”

b. A licensee who is required by Iowa Code section 235B.3 or 235E.2 to report dependent adult abuse shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) “*b*” in the previous three years or condition(s) for waiver of this requirement as identified in paragraph “*e*.”

c. The course(s) shall be the curriculum provided by the Iowa department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs “*a*” to “*c*,” including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to an occupational or mental disability or illness as identified in 645—Chapter 4.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “*a*” to “*e*.”

206.7(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

206.7(6) Persons licensed to practice as occupational therapists or occupational therapy assistants shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

206.7(7) Late renewal. The license shall become a late license when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.11(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

206.7(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as an occupational therapist or occupational therapy assistant in Iowa until the license is reactivated. A licensee who practices as an occupational therapist or occupational

therapy assistant in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—206.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

206.8(1) Submit a reactivation application on a form provided by the board.

206.8(2) Pay the reactivation fee that is due as specified in 645—subrule 5.11(5).

206.8(3) Provide verification of current competence to practice occupational therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 15 hours of continuing education for an occupational therapy assistant and 30 hours of continuing education for an occupational therapist within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 30 hours of continuing education for an occupational therapy assistant and 60 hours of continuing education for an occupational therapist within two years of application for reactivation; verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation; or evidence of successful completion of the professional examination required for initial licensure completed within one year prior to the submission of an application for reactivation.

645—206.9(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 rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—206.8(17A,147,272C) prior to practicing occupational therapy in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148B and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 207
“Continuing Education for Occupational Therapists and Occupational Therapy Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: sections 147.36, 148B, 272C.3, and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148B and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:30 to 2:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Iowa Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 207 sets forth continuing education requirements for occupational therapists and occupational therapist assistants. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that licensees stay up to date with laws, rules and industry standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees are responsible for the cost of continuing education.
 - Classes of persons that will benefit from the proposed rulemaking:
The intended benefit of continuing education is to ensure that occupational therapists and occupational therapist assistants maintain up-to-date knowledge on industry-related skills and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

Iowa requires an occupational therapist to complete 30 hours of continuing education every two years and an occupational therapist assistant to complete 15 hours of continuing education every two years. The cost to obtain continuing education courses are often priced “per course” versus “per contact hour.” An on-demand one-hour online course covering a general topic that meets these requirements of a licensure board could be free, while in-person multiday courses presented by one or more subject matter experts tend to be more expensive. There are multiple entities that offer continuing education courses to licensees, both online and in person.

The National Board for Certification in Occupational Therapy (NBCOT®) Professional Development Provider offers unlimited access to continuing education for an annual fee of \$99. The American Occupational Therapy Association (AOTA) offers a national conference, and members have unlimited access to over 200 CEUs every year for an additional \$70. AOTA has a position statement on the benefits of continuing education. Practitioners who maintain credentialing through NBCOT may use the navigator for up to 36 CEUs with some contingent requirements. NBCOT presented on this service in June 2023. The Iowa Occupational Therapy Association (IOTA) offers a conference each fall.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures that licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board of Physical and Occupational Therapy activities at approximately 0.22 full-time equivalent (FTE) position, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. This includes answering questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board does not recommend a change in continuing education hours at this time. Iowa’s requirements for occupational therapists to complete 30 continuing education hours and occupational therapist assistants to complete 15 continuing education hours every two years is lower than the neighboring state of Kansas (40 OT/A) and slightly higher than Illinois (24 OT/A), Missouri (24 OT/A), Minnesota (24 OT and 18 OTA), Nebraska (20 OT and 15 OTA) and South Dakota (12 OT/A).

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less restrictive alternative would be to reduce the amount of continuing education required. The Board does not recommend a change in continuing education hours at this time. Iowa’s requirements for occupational therapists to complete 30 continuing education hours and occupational therapist assistants

to complete 15 continuing education hours every two years is lower than the neighboring state of Kansas (40 OT/A) and slightly higher than Illinois (24 OT/A), Missouri (24 OT/A), Minnesota (24 OT and 18 OTA), Nebraska (20 OT and 15 OTA) and South Dakota (12 OT/A).

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring if the Board would recommend lowering the continuing education requirements. The Board does not recommend a change in continuing education hours at this time.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 207 and adopt the following **new** chapter in lieu thereof:

CHAPTER 207 CONTINUING EDUCATION FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

645—207.1(148B) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Audit*” means the selection of licensees for verification of compliance with continuing education requirements.

“*Board*” means the board of physical and occupational therapy.

“*Continuing education*” means the same as the definition in Iowa Code section 272C.1.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously and that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as an occupational therapist or occupational therapy assistant in the state of Iowa.

645—207.2(272C) Continuing education requirements.

207.2(1) The biennial continuing education compliance period shall extend for a two-year period that begins on the sixteenth day of the licensee’s birth month and ends two years later on the fifteenth day of the birth month.

a. Requirements for occupational therapist licensees. Each biennium, each person who is licensed to practice as an occupational therapist in this state will have the responsibility to finance the cost and be required to complete a minimum of 30 hours of continuing education approved by the board.

b. Requirements for occupational therapy assistant licensees. Each biennium, each person who is licensed to practice as an occupational therapy assistant in this state will be required to complete a minimum of 15 hours of continuing education approved by the board.

207.2(2) Requirements of 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 30 hours of continuing education per biennium for occupational therapists and 15 hours for occupational therapy assistants each subsequent license renewal.

207.2(3) With the exception of continuing education hours obtained by new licensees, no hours of continuing education shall be carried over into the next biennium. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

645—207.3(148B,272C) Standards.

207.3(1) *General criteria.* Appropriate continuing education activity for purposes of license renewal will support each of the following:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program.

At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

207.3(2) *Specific criteria.*

a. Licensees may obtain continuing education hours of credit by:

(1) Attending workshops, conferences, or symposiums.

(2) Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.

(3) Directly supervising students for clinical education if the student being supervised is from an accredited occupational therapy or occupational therapy assistant program and is participating in a full-time clinical experience (defined as approximately 40 hours per week, ranging from 1 to 18 weeks). One hour will be awarded for every 160 contact hours of supervision. A maximum of 8 hours for an occupational therapist and 4 hours for an occupational therapy assistant may be awarded per biennium. The occupational therapist or occupational therapy assistant must have documentation from the accredited educational program indicating the number of hours spent supervising a student.

(4) Presenting professional programs that meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation for the first offering of the course. A course schedule or brochure must be maintained for audit.

(5) Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of occupational therapy will be necessary in order for the licensee to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(6) Teaching in an approved college, university, or graduate school. The licensee may receive the following continuing education credits on a one-time basis for the first offering of a course:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(7) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

(8) Participating in professional organizations related to the practice of occupational therapy, with 1 credit hour received for each six months of active service as an officer, delegate, or committee member, for a maximum of 4 hours of credit per biennium. Verification of participation must be provided by the professional organization to document the continuing education credit.

b. Continuing education hours of credit in the following topics are not considered to be directly and primarily related to the clinical application of occupational therapy and therefore must not exceed a maximum combined total of 8 hours of credit for an occupational therapist licensee and 4 hours of credit for an occupational therapy assistant licensee:

(1) Business-related topics, such as marketing, time management, government regulations, and other like topics.

(2) Personal skills topics, such as career burnout, communication skills, human relations, and other like topics.

(3) General health topics, such as clinical research, CPR, mandatory reporter training, and other like topics.

These rules are intended to implement Iowa Code section 272C.2 and chapter 148B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 208
“Practice of Occupational Therapists and Occupational Therapy Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 148B, 272C.3, and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148B and
272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:30 to 2:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Iowa Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 208 provides Iowans, licensees, and their employers with practice guidance and requirements for occupational therapists and occupational therapist assistants. The rules provide guidance on what is considered appropriate and what is not appropriate practice. Categories include recordkeeping, ethical practice standards, and telehealth visits. The chapter also describes allowed delegation by a supervising occupational therapist.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public. Licensees may incur costs related to recordkeeping, ethical practice standards, telehealth visits and supervision requirements. Licensees will be responsible for the costs associated with meeting these practice requirements. The Board recognizes that there are costs associated but is unable to assess the actual cost.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of the practice standard regulations is to ensure public safety and maintain a high level of care for Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board does not have data on the actual costs of implementing the practice standards. The Board has not identified a more cost-effective alternative to the current complaint investigation process.

Practice standards (recordkeeping, code of ethics, telehealth and delegation of supervision requirements) could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting public health and safety of Iowans.

- Qualitative description of impact:

Establishing minimum practice standard requirements ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public that would remain unchecked without a basic understanding of recordkeeping, code of ethics, telehealth and delegation of supervision requirements as outlined in the chapter, as well as complaint investigation.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes investigation of complaints with letters, phone calls and in-person interviews.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing practice standard regulations are paid to private entities that provide the necessary technology for the licensees to comply with telehealth requirements.

Costs to the agency are the staff time needed to manage Board activities. An executive officer supports the full scope of this work at 0.22 full-time equivalent (FTE) position. This additionally includes answering questions from the public and licensees about items such as practice standards, including the code of ethics, recordkeeping, telehealth and delegation of supervision as well as related education requirements, Board meeting administration, etc. Staff salaries to support the work of the board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There would be a loss of revenue for the private industries that provide the equipment and supplies necessary to implement telehealth practices.

Practice standard requirements could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting public health and safety of Iowans.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current complaint investigation process. Practice standard requirements could be reduced or eliminated for the purpose of lowering the standard of practice by the profession, but the Board would be concerned about accomplishing the intended benefit of protecting the public health and safety of Iowans.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current practice standard requirements that would ensure the same level of safety of Iowans.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board believes that eliminating the practice standard requirements would increase the number of injuries to the public.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 208 and adopt the following new chapter in lieu thereof:

CHAPTER 208

PRACTICE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

645—208.1(148B,272C) Code of ethics for occupational therapists and occupational therapy assistants.

208.1(1) Occupational therapy. The practice of occupational therapy minimally consist of:

- a. Interpreting referrals;
- b. Evaluating patients;
- c. Identifying and documenting patient problems and goals;
- d. Establishing and documenting a plan of care;
- e. Providing treatment;
- f. Determining the appropriate portions of the treatment program to be delegated to assistive personnel;
- g. Supervising individuals as described in rule 645—208.5(272C);
- h. Providing timely patient reevaluation;
- i. Maintaining timely and adequate patient records consistent with the standards found in rule 645—208.2(147).

208.1(2) An occupational therapist or occupational therapist assistant should:

- a. Not practice outside the scope of the license;
- b. Not perform a treatment procedure that is inadvisable or contraindicated;
- c. Not continue treatment beyond the point of possible benefit to the patient or treat a patient more frequently than necessary to obtain maximum therapeutic effect;

- d.* Not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or refunding of an unearned fee;
- e.* Not profit by means of credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of occupational therapy services;
- f.* Not obtain payment through fraudulent means. Obtaining payment through fraudulent means includes, but is not limited to:
 - (1) Reporting incorrect treatment dates for the purpose of obtaining payment;
 - (2) Reporting charges for services not rendered;
 - (3) Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or
 - (4) Aiding a patient in fraudulently obtaining payment;
- g.* Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the occupational therapist owns stock or has any other direct or indirect financial interest;
- h.* Not permit another person to use the therapist's license for any purpose;
- i.* Not verbally or physically abuse a patient or client;
- j.* Not engage in sexual misconduct. Sexual misconduct includes the following:
 - (1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient or client;
 - (2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient or client;
- k.* Follow with the standards for supervision found in rule 645—208.4(272C);
- l.* Not perform a task or service for which the therapist lacks the skill, knowledge or competence. In such a case, the therapist should either refuse to perform the task or service and/or arrange for a professionally qualified licensed practitioner to perform the task or service.
- m.* Sign the occupational therapy treatment record to indicate that the occupational therapy services were provided in accordance with the rules and regulations for practicing as an occupational therapist or occupational therapist assistant.

645—208.2(147) Recordkeeping.

208.2(1) A licensee should maintain sufficient, timely, and accurate documentation in patient records to reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

208.2(2) A licensee should store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee should store patient records for a minimum of five years after the date of the patient's discharge, or in the case of a minor, three years after the patient reaches the age of majority under state law or five years after the date of discharge, whichever is longer.

208.2(3) Electronic recordkeeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

208.2(4) Correction of records.

a. Hard-copy records. Notations should be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

208.2(5) Confidentiality and transfer of records. Occupational therapists and occupational therapy assistants shall preserve the confidentiality of patient records consistent with federal and state law.

208.2(6) Retirement or discontinuance of practice. If a licensee is the owner of a practice, the licensee shall notify in writing all active patients and shall make reasonable arrangements with those

patients to transfer patient records, or copies of those records, to the succeeding licensee upon knowledge and agreement of the patient.

208.2(7) Nothing stated in these rules shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed individual who is assuming a practice, provided that written notice is furnished to all patients.

645—208.3(147) Telehealth visits. A licensee may provide occupational therapy services to a patient utilizing a telehealth visit if the occupational therapy services are provided in accordance with all requirements of this chapter.

208.3(1) "Telehealth visit" means the provision of occupational therapy services by a licensee to a patient using technology where the licensee and the patient are not at the same physical location for the occupational therapy session.

208.3(2) A licensee engaged in a telehealth visit shall utilize technology that is secure and HIPAA-compliant and that includes, at a minimum, audio and video equipment that allows two-way real-time interactive communication between the licensee and the patient. A licensee may use non-real-time technologies to prepare for an occupational therapy session or to communicate with a patient between occupational therapy sessions.

208.3(3) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person occupational therapy. A licensee shall not utilize a telehealth visit if the standard of care for the particular occupational therapy services cannot be met using technology.

208.3(4) Any occupational therapist or occupational therapist assistant who provides an occupational therapy telehealth visit to a patient located in Iowa shall be licensed in Iowa.

208.3(5) Prior to the first telehealth visit, a licensee shall obtain informed consent from the patient specific to the occupational therapy services that will be provided in a telehealth visit. At a minimum, the informed consent shall specifically inform the patient of the following:

- a. The risks and limitations of the use of technology to provide occupational therapy services;
- b. The potential for unauthorized access to protected health information; and
- c. The potential for disruption of technology during a telehealth visit.

208.3(6) A licensee shall only provide occupational therapy services using a telehealth visit in the areas of competence wherein proficiency in providing the particular service using technology has been gained through education, training, and experience.

208.3(7) A licensee shall identify in the clinical record when occupational therapy services are provided utilizing a telehealth visit.

645—208.4(147) Practice of occupational therapy limited permit holders.

208.4(1) Occupational therapist limited permit holders may:

- a. Evaluate clients, plan treatment programs, and provide periodic reevaluations only under supervision of a licensed OT who shall bear full responsibility for care provided under the OT's supervision; and
- b. Perform the duties of the occupational therapist under the supervision of an Iowa-licensed occupational therapist, except for providing supervision to an occupational therapy assistant.

208.4(2) Occupational therapy assistants and limited permit holders shall:

- a. Follow the treatment plan written by the supervising OT outlining the elements that have been delegated; and
- b. Perform occupational therapy procedures delegated by the supervising OT as required in rule 645—208.5(148B).

645—208.5(148B) Supervision requirements.

208.5(1) Care rendered by unlicensed assistive personnel shall not be documented or charged as occupational therapy unless direct on-site supervision is provided by an OT or in-sight supervision is provided by an OTA.

208.5(2) Occupational therapist supervisor responsibilities. The supervisor shall:

- a.* Provide supervision to a licensed OTA, OT limited permit holder and OTA limited permit holder anytime occupational therapy services are rendered. Supervision may be provided on site or through the use of telecommunication or other technology.
- b.* Ensure that every licensed OTA, OT limited permit holder and OTA limited permit holder being supervised is aware of who the supervisor is and how the supervisor can be contacted anytime occupational therapy services are rendered.
- c.* Assume responsibility for all delegated tasks and shall not delegate a service which exceeds the expertise of the OTA or OTA limited permit holder.
- d.* Provide evaluation and development of a treatment plan for use by the OTA.
- e.* Ensure that the OTA, OT limited permit holder and OTA limited permit holder under the OT's supervision have current licenses to practice.
- f.* Ensure that the signature of an OTA on an occupational therapy treatment record indicates that the occupational therapy services were provided in accordance with the rules and regulations for practicing as an OTA.

208.5(3) The following are functions that only an occupational therapist may provide and that shall not be delegated to an OTA:

- a.* Interpretation of referrals;
- b.* Initial occupational therapy evaluation and reevaluations;
- c.* Identification, determination or modification of patient problems, goals, and care plans;
- d.* Final discharge evaluation and establishment of the discharge plan;
- e.* Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;
- f.* Delegation of and instruction in the services to be rendered by the OTA including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures; and
- g.* Timely review of documentation, reexamination of the patient and revision of the plan when indicated.

208.5(4) Supervision of unlicensed assistive personnel. OTs are responsible for patient care provided by unlicensed assistive personnel under the OT's supervision. Unlicensed assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

- a.* The supervising OT shall physically participate in the patient's treatment or evaluation, or both, each treatment day;
- b.* The unlicensed assistive personnel shall provide independent patient care only while under the on-site supervision of the supervising OT;
- c.* Documentation made in occupational therapy records by unlicensed assistive personnel shall be cosigned by the supervising OT; and
- d.* The supervising OT shall provide periodic reevaluation of the performance of unlicensed assistive personnel in relation to the patient.

208.5(5) Minimum frequency of OT interaction. At a minimum, an OT must directly participate in treatment, either in person or through a telehealth visit, every twelfth visit for all patients and must document each visit. The occupational therapist shall participate at a higher frequency when the standard of care dictates.

208.5(6) Occupational therapy assistant responsibilities.

- a.* The occupational therapy assistant shall:
 - (1) Provide only those services for which the OTA has the necessary skills and shall consult the supervising occupational therapist if the procedures are believed not to be in the best interest of the patient;
 - (2) Gather data relating to the patient's disability during screening, but shall not interpret the patient information as it pertains to the plan of care;
 - (3) Communicate any change, or lack of change, which occurs in the patient's condition and which may need the assessment of the OT;
 - (4) Provide occupational therapy services only under the supervision of the occupational therapist;

- (5) Provide treatment only after evaluation and development of a treatment plan by the occupational therapist;
 - (6) Refer inquiries that require interpretation of patient information to the occupational therapist;
 - (7) Be supervised by an occupational therapist, either on site or through the use of telecommunication or other technology, at all times when occupational therapy services are being rendered;
 - (8) Receive supervision from any number of at least one occupational therapist; and
 - (9) Record on every patient chart the name of the OTA's supervisor for each treatment session.
- b.* The signature of an OTA on the occupational therapy treatment record indicates that occupational therapy services were provided in accordance with the rules and regulations for practicing as an OTA.

208.5(7) Unlicensed assistive personnel. Unlicensed assistive personnel may assist an OTA in providing patient care in the absence of an OT only if the OTA maintains in-sight supervision of the unlicensed assistive personnel and the OTA is primarily and significantly involved in that patient's care.

208.5(8) The occupational therapy limited permit holder may evaluate clients, plan treatment programs, and provide periodic reevaluations under supervision of a licensed occupational therapist who shall bear full responsibility for care provided under the occupational therapist's supervision.

These rules are intended to implement Iowa Code chapters 147, 148B and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 209
“Discipline for Occupational Therapists and Occupational Therapy Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 148B, 272C.3, and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148B and
272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:30 to 2:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Phone numbers:
[tel.meet/bfq-qaeb-nwu?pin=7324359836726](tel:meet/bfq-qaeb-nwu?pin=7324359836726)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 209 defines actions that are inconsistent with professional standards for licensees, which are established to protect the consumer and colleagues. Actions inconsistent with professional standards could result in disciplinary actions against a practitioner’s license.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the occupational therapist and occupational therapist assistant licensees and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are associated with costs to the licensed professional. Licensees may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fine amounts are not established in rule for these licensees and are determined by the Board of Physical and Occupational Therapy. The Board has statutory authority to impose a civil penalty on individuals practicing without a license.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed chapter since there is clarity on compliance and potential consequences for noncompliance. The benefit is being achieved since the Board had 15

founded violations between 2015 and 2023. The low number of public discipline cases demonstrates the effectiveness of the continuing education requirements in ensuring licensees are remaining current in their professional knowledge and providing quality care to Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes the benefits achieved justify the costs because the cost of inaction would increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline. Fees incurred by the professional are up to \$1,000 per violation.

The Board has not identified a more cost-effective alternative to the current discipline process. There could be a consideration of reducing or eliminating grounds for discipline, but the Board believes these requirements are important in order to protect the public from infection risks.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee takes action that is grounds for discipline. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer, licensure specialist and investigator support the full scope of this work at 0.22 full-time equivalent (FTE) position. This additionally includes answering questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The amount of complaints received are relatively low, and costs reflect that. The Board believes the costs are justified because inaction could increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline. The benefit of protecting the public justifies the costs to review and address the standards of professional behavior.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

The Iowa Boards and Commissions Review Committee recommended consolidating the Board of Physical and Occupational Therapy with Athletic Training, Chiropractic and Massage Therapy.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

While there has been some standardization of consideration of criminal convictions, the Board has not identified a less restrictive alternative to public protection.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the occupational therapist and occupational therapist assistant licensees and are therefore excluded from the general disciplinary chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 209 and adopt the following **new** chapter in lieu thereof:

CHAPTER 209 DISCIPLINE FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

645—209.1(148B) Definitions.

“*Board*” means the board of physical and occupational therapy.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice pursuant to Iowa Code chapter 148A and 645—Chapters 206 to 209 in Iowa.

645—209.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that any of the acts or offenses listed in such rule or in Iowa Code section 147.55 have occurred:

209.2(1) Professional incompetency. Professional 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 occupational therapists or occupational therapy assistants in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average occupational therapist or occupational therapy assistant acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of the licensed occupational therapist or licensed occupational therapy assistant 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.

209.2(2) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of occupational therapy or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

209.2(3) Violation of a regulation, rule or law of this state, another state, or the United States which relates to the practice of occupational therapy, including, but not limited to, the code of ethics found in rule 645—208.1(148B,272C).

209.2(4) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of occupational therapy in another state, district, territory or country.

209.2(5) Knowingly aiding, assisting or advising a person to unlawfully practice occupational therapy.

209.2(6) Failure to report a change of name or address within 30 days after it occurs.

209.2(7) Representing oneself as a licensed occupational therapist or occupational therapy assistant when one's license has been suspended or revoked, or when the license is on inactive status.

209.2(8) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

These rules are intended to implement Iowa Code chapters 147, 148B and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 220
“Licensure of Podiatrists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 149 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 149 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:20 to 10:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets minimum standards for entry into the podiatry profession. Iowa residents, licensees, and employers benefit from the rulemaking because it articulates the processes by which individuals apply for licensure as a podiatrist in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and exam requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no known direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. The fee for initial podiatry licensure is \$400 and the renewal fee is \$400 in the state of Iowa. Iowa’s initial licensure

application process is similar to those implemented by other state boards of podiatry. The application fees vary by state, however, with Kansas at \$750, Minnesota at \$600, and South Dakota at \$500 (all higher); Illinois at the same cost of \$400; and Missouri at \$200 and Nebraska at \$131 (both lower).

The licensee would also have costs related to educational requirements and exam requirements. The Board has not identified an exact cost of education for this field because the cost varies depending on the school the licensee chooses to attend to meet those requirements. Exam costs are consistent across states, with the national standard being the three-part National Board of Podiatric Medical Examiners (NBPME) exam. The total exam cost is \$2,775.

Board staff review applications for initial and renewal licenses, answer inquiries on licensing, and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.15 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide the academic training for podiatrists to obtain their licenses in the state of Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the exams. Because the cost of education is so variable depending on the institution the person attends, the Board is unable to put an exact cost on education or exam preparation.

Licensing fees are \$400 for an initial license and \$400 for each renewal period.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals, and reinstatements. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. It takes roughly 0.15 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements assure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of podiatrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the state of Iowa are similar to those of surrounding states. The surrounding states all require similar licensing procedures for podiatrists.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of podiatrists. The Board believes all current requirements assure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of podiatrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the licensure of podiatrists. The Board believes all current requirements assure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of podiatrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of podiatrists. The Board believes all current requirements assure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of optometrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for podiatrists. While some podiatrists likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 220 and adopt the following **new** chapter in lieu thereof:

PODIATRISTS

| | |
|-------------|---|
| CHAPTER 220 | LICENSURE OF PODIATRISTS |
| CHAPTER 221 | LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS |
| CHAPTER 222 | CONTINUING EDUCATION FOR PODIATRISTS |
| CHAPTER 223 | PRACTICE OF PODIATRY |
| CHAPTER 224 | DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PEDORTHISTS, AND PROSTHETISTS |
| CHAPTER 225 | CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS |

CHAPTER 220
LICENSURE OF PODIATRISTS

645—220.1(149) Definitions.

“Active license” means a license that is current and has not expired.

“Board” means the board of podiatry.

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period.

“Licensee” means any person licensed to practice as a podiatrist in the state of Iowa.

“License expiration date” means June 30 of even-numbered years.

“Licensure by endorsement” means the issuance of an Iowa license to practice podiatry to an applicant who is or has been licensed in another state.

“NBPMME” means National Board of Podiatric Medical Examiners.

“Reactivate” or *“reactivation”* means the process as outlined in rule 645—220.15(17A,147,272C) by which an inactive license is restored to active status.

“Reciprocal license” means the issuance of an Iowa license to practice podiatry to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who 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.

645—220.2(149) Requirements for licensure.

220.2(1) The applicant will submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

220.2(2) No application will be considered complete until official copies of academic transcripts are received, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric

Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the school to the board.

220.2(3) Licensees who were issued their licenses within six months prior to the renewal date do not need to renew their licenses until the renewal date two years later.

220.2(4) Incomplete applications that have been on file in the board office for more than two years will be:

- a.* Considered invalid and destroyed; or
- b.* Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

220.2(5) An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.2(6) An applicant who graduated from a podiatric college on or after January 1, 1995, but before January 1, 2013, shall present documentation of successful completion of a residency approved by the American Podiatric Medical Association's Council on Podiatric Medical Education.

220.2(7) An applicant who graduated from a podiatric college on or after January 1, 2013, shall present documentation of successful completion of two years of a residency approved by the American Podiatric Medical Association's Council on Podiatric Medical Education.

220.2(8) Passing score reports for Part I, Part II, and Part III of the NBPME examination shall be sent directly from the examination service to the board.

645—220.3(149) Written examinations.

220.3(1) The examinations required by the board shall be Part I, Part II, and Part III of the NBPME.

220.3(2) The applicant has responsibility for:

- a.* Making arrangements to take the examinations; and
- b.* Arranging to have the examination score reports sent directly to the board from the NBPME.

220.3(3) A passing score as recommended by the administrators of the NBPME examinations shall be required.

645—220.4(149) Educational qualifications.

220.4(1) A new applicant for permanent or temporary licensure to practice as a podiatrist shall present official copies of academic transcripts, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the school to the board of podiatry.

220.4(2) Foreign-trained podiatrists shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone 310.258.9451, website www.ierf.org, or email at info@ierf.org; or International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone 727.549.8555. The professional curriculum must be equivalent to that stated in these rules. The 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 podiatry program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

645—220.5(149) Title designations. A podiatrist may use the prefix "Doctor" but shall add after the person's name the word "Podiatrist" or "DPM."

645—220.6(147,149) Temporary license.

220.6(1) A temporary license may be issued for up to one year and may be annually renewed at the discretion of the board. Temporary licenses will expire on June 30.

220.6(2) Each applicant shall:

a. Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);

b. Have official copies of academic transcripts sent directly to the board of podiatry from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association;

c. Request that passing score reports of the NBPME examination Part I and Part II be sent directly to the board of podiatry from the National Board of Podiatric Medical Examiners;

d. Furnish an affidavit by the institution director or dean of an approved podiatric college attesting that the applicant has been accepted into a residency program in this state that is approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association;

e. Request 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:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

220.6(3) An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.6(4) The ultimate decision to issue a temporary license resides with the board, and a temporary license shall be surrendered if the reason for issuance ceases to exist.

645—220.7(149) Licensure by endorsement. An applicant who has been a licensed podiatrist under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

220.7(1) The board may receive by endorsement any applicant from the District of Columbia, another state, territory, province or foreign country who:

a. Submits a completed online application for licensure and pays the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);

b. Shows evidence of licensure requirements that are similar to those required in Iowa;

c. Provides the board with official copies of academic transcripts, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the school to the board of podiatry; and

d. 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:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

220.7(2) An applicant shall submit the passing score reports for Part I and Part II of the NBPME examination. An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.7(3) An applicant shall submit passing score reports for Part III of the NBPME examination. An applicant who passed the Part III NBPME examination more than three years prior to the date of application in Iowa must submit proof of podiatry practice for one of the last three years.

220.7(4) An applicant who graduated from a podiatric college on or after January 1, 1995, must present documentation of successful completion of a residency approved by the American Podiatric Medical Association's Council on Podiatric Medical Education.

220.7(5) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—220.8(149) License renewal.

220.8(1) The biennial license renewal period for a license to practice podiatry begins on July 1 of an even-numbered year and ends on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

220.8(2) An individual who was issued a license within six months of the license renewal date does not need to renew the individual's license until the subsequent renewal two years later.

220.8(3) An applicant who graduated from a podiatric college on or after January 1, 2013, and who is seeking renewal for the first time shall present documentation of successful completion of a residency program approved by the American Podiatric Medical Association's Council on Podiatric Medical Education.

220.8(4) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—222.2(149,272C) and the mandatory reporting requirements of subrule 220.9(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.

220.8(5) 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 and dependent adults in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 220.8(5) "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall complete the applicable department of health and human services training related to the identification and reporting of child and dependent adult abuse as required by Iowa Code section 232.69(3) "b." 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 4.

c. The board may select licensees for audit of compliance with the requirements in paragraphs 220.8(5) "a" and "b."

220.8(6) Upon receiving the information required by this rule and the required fee, board staff will administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

220.8(7) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

220.8(8) Late renewal. A license not renewed by the expiration date will be assessed a late fee as specified in 645—subrule 5.15(3). Completion of renewal requirements and submission of the late fee within the grace period are needed to renew the license.

220.8(9) Inactive license. A license not renewed by the end of the grace period is inactive. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a podiatrist in Iowa until the license is reactivated. A licensee who practices as a podiatrist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—220.9(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, an applicant will:

220.9(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

220.9(2) Provide verification of current competence to practice as a podiatrist by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

645—220.10(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—220.15(17A,147,272C) prior to practicing as a podiatrist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 149, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 221
“Licensure of Orthotists, Prosthetists, and Pedorthists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 148F and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148F and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:20 to 10:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing (DIAL) and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets minimum standards for entry into the professions of orthotists, prosthetists, and pedorthists. Iowa residents, licensees, and employers benefit from the rulemaking because it articulates the processes by which individuals apply for licensure in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no known direct cost to the general public, but there is a cost to the applicant because complying with the minimum requirements to enter into the profession is at the expense of the licensee. The fee for initial licensure is \$400 and the renewal fee is \$400 in the state of Iowa. Iowa's initial licensure application process is similar to those implemented by other state boards of podiatry. The application fees vary by state, however, with Oklahoma at \$300 for orthotists and prosthetists and \$180 for pedorthists, Minnesota at \$600 for orthotists and prosthetists and \$400 for pedorthists, and Illinois at \$400 for all three professions.

The licensee would also have costs related to educational requirements and examination requirements. The Board of Podiatry has not identified an exact cost of education for this field because the cost varies depending on the school the licensee chooses to attend to meet those requirements. Examination costs are consistent across states, with the national standard being the certification examination offered by American Board of Certification in Orthotics, Prosthetics and Pedorthics or the Board of Certification/Accreditation. The total examination cost is \$400.

Board staff review applications for initial and renewal licenses, answer inquiries on licensing, and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.15 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide the academic training for individuals to obtain their licenses in the state of Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the examinations. Because the cost of education is so variable depending on the institution the person attends, the Board is unable to put an exact cost on the cost of education or examination preparation.

Licensing fees are \$400 for an initial license and \$400 for each renewal period.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals, and reinstatements. Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.15 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the state of Iowa are similar to those of surrounding states. The surrounding states all require similar licensing procedures for orthotists, prosthetists, and pedorthists.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of orthotists, pedorthists, and prosthetists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rule provides consistency related to the licensure of podiatrists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule edits support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the licensure of orthotists, pedorthists, and prosthetists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rules provide consistency related to the licensure of orthotists, prosthetists, and pedorthists in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of orthotists, pedorthists, and prosthetists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of orthotists, pedorthists, and prosthetists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for orthotists, pedorthists, and prosthetists. While some orthotists, pedorthists, and prosthetists likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 221 and adopt the following new chapter in lieu thereof:

CHAPTER 221
LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—221.1(148F) Definitions.

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of podiatry.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Licensee*” means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is or has been licensed in another state.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—221.8(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in rule 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.

645—221.2(148F) Requirements for licensure.

221.2(1) The applicant will submit a completed online application for licensure and pay the non-refundable licensure fee specified in rule 645—5.15(147,148F,149).

221.2(2) No application will be considered complete until official copies of academic transcripts are received.

a. Applicants for licensure in orthotics or prosthetics must submit proof of graduation from an educational program approved by the Commission on Accreditation of Allied Health Education Programs.

b. Applicants for licensure in pedorthics must submit proof of graduation from an educational program approved by the National Commission on Orthotic and Prosthetic Education.

221.2(3) Transcripts must be sent directly from the school to the board.

221.2(4) Licensees who were issued their licenses within six months prior to the renewal date do not need to renew their licenses until the renewal date two years later.

221.2(5) Incomplete applications that have been on file in the board office for more than two years will be:

a. Considered invalid and destroyed; or

b. Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

221.2(6) The applicant shall ensure that the passing score from the appropriate professional examination is sent directly to the board from the examination service.

221.2(7) Applicants for licensure in orthotics or prosthetics must provide documentation of successful completion of a residency program accredited by the National Commission on Orthotic and Prosthetic Education.

221.2(8) Applicants for licensure in pedorthics must provide documentation of successful completion of a qualified clinical experience program.

645—221.3(148F) Written examinations.

221.3(1) Prosthetists must have completed and passed the Board of Certification/Accreditation, International (BOC), or American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated (ABC), examination for prosthetists.

221.3(2) Orthotists must have completed and passed the BOC or ABC examination for orthotists.

221.3(3) Pedorthists must have completed and passed the BOC or ABC examination for pedorthists.

221.3(4) The applicant has responsibility for:

a. Making arrangements to take the examinations; and

b. Arranging to have the examination score reports sent directly to the board from the ABC or BOC.

221.3(5) A passing score as recommended by the administrators of the ABC or BOC examination shall be required.

645—221.4(148F) Educational qualifications.

221.4(1) An applicant for licensure to practice as an orthotist or prosthetist shall present official copies of academic transcripts, verifying completion of the following requirements:

a. A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the school to the board of podiatry; and

b. Verification of completion of an academic program in orthotics or prosthetics accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP). Transcripts must be sent directly from the school to the board of podiatry.

221.4(2) An applicant for licensure to practice as a pedorthist shall present official copies of academic transcripts, verifying completion of the following requirements:

a. A high school diploma or its equivalent; and

b. Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the school to the board of podiatry.

221.4(3) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

645—221.5(148F) Licensure by endorsement.

221.5(1) An applicant who has been a licensed orthotist, prosthetist, or pedorthist under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia, another state, territory, province or foreign country who:

- a.* Submits a completed online application for licensure and pays the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);
- b.* Shows evidence of licensure requirements that are similar to those required in Iowa;
- c.* For prosthetic or orthotic licensure, provides:
 - (1) A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the school to the board of podiatry; and
 - (2) Verification of completion of an academic program in orthotics or prosthetics accredited by CAAHEP. Transcripts must be sent directly from the school to the board of podiatry;
- d.* For pedorthic licensure, provides:
 - (1) A high school diploma or its equivalent; and
 - (2) Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the school to the board of podiatry;
- e.* 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:
 - (1) Licensee's name;
 - (2) Date of initial licensure;
 - (3) Current licensure status; and
 - (4) Any disciplinary action taken against the license;
- f.* Submits a copy of the scores from the appropriate professional examination to be sent directly from the examination service to the board.

221.5(2) Individuals who were issued their licenses by endorsement within six months of the license renewal date do not need to renew their licenses until the next renewal date two years later.

221.5(3) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—221.6(148F) License renewal.

221.6(1) The biennial license renewal period for a license to practice orthotics, prosthetics, or pedorthics begins on July 1 of an even-numbered year and ends on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

221.6(2) 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 date two years later.

221.6(3) A licensee seeking renewal shall:

- a.* Meet the continuing education requirements of rule 645—225.2(148F,272C). 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.

221.6(4) Upon receipt of the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

221.6(5) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

221.6(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule

5.15(7). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

221.6(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice as an orthotist, prosthetist, or pedorthist in Iowa until the license is reactivated. A licensee who practices as an orthotist, prosthetist, or pedorthist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—221.7(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

221.7(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

221.7(2) Provide verification of current competence to practice by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of:

1. For orthotists or prosthetists, 30 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 20 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of:

1. For orthotists or prosthetists, 60 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 40 hours of continuing education within two years of application for reactivation.

645—221.8(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 rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—221.8(17A,147,272C) prior to practicing as an orthotist, a prosthetist, or a pedorthist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148F, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 222
“Continuing Education for Podiatrists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 154D and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154D and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:20 to 10:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for podiatrists. The rulemaking includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rulemaking, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that podiatrists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Board of Podiatry is not privy to exact costs, but based on research estimates, the cost is around \$200 every two years for a licensee to meet these requirements.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is ensuring that podiatrists maintain up-to-date practice standards and, as a result, provide high quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offers these courses, so the Board is not privy to exact costs, but based on research estimates, the cost is around \$200 every two years for a licensee to meet these requirements. The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 40 hours of continuing education for this license type every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.20 full-time equivalent (FTE) position, which includes answering questions from the public and licensees regarding practice standards, continuing education, Board meeting administration, and more.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board has not recommended a reduction in hours.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public disciplinary actions.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be reducing the amount of continuing education required. A review of surrounding states has shown that Iowa is in line with neighboring jurisdictions. Iowa requires

40 hours of continuing education every two years. Illinois requires 100 hours every two years, Nebraska requires 48 hours every two years, and Minnesota requires 40 hours every two years. Kansas requires 54 hours every three years, South Dakota requires 30 hours every two years, and Missouri requires 20 hours every two years. Staff held conversations with Board members inquiring whether the Board would recommend lowering the continuing education requirements. The Board did not recommend a change in continuing education hours.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring whether the Board would recommend lowering the continuing education requirements. The Board has considered a change of the total number of and frequency of continuing education hours and the safety of the public. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Podiatrists practice in a number of settings including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. While some licensees likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Conversely, the entities that provide continuing education may face a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 222 and adopt the following **new** chapter in lieu thereof:

CHAPTER 222
CONTINUING EDUCATION FOR PODIATRISTS

645—222.1(149,272C) Definitions.

“*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.

“*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 podiatry.

“*Continuing education*” means planned, organized learning acts acquired during 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.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a podiatrist in the state of Iowa.

645—222.2(149,272C) Continuing education requirements.

222.2(1) The biennial continuing education compliance period extends for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a podiatrist in this state shall be required to complete a minimum of 40 hours of continuing education.

222.2(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 40 hours of continuing education per biennium for each subsequent license renewal.

222.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

222.2(4) No hours of continuing education will be carried over into the next biennium.

222.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—222.3(149,272C) Standards.

222.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

222.3(2) *Specific criteria.*

a. Licensees may obtain continuing education hours of credit by teaching in a college, university, or graduate school that is recognized by the U.S. Department of Education. The licensee may receive credit on a one-time basis for the first offering of a course.

b. Continuing education hours of credit may be obtained by completing the following programs/activities of a podiatric scientific nature and sponsored by an accredited college of podiatric medicine or the American Podiatric Medical Association or a regional or state affiliate or nonprofit hospital that are:

(1) Educational activities in which participants and faculty are present at the same time and attendance can be verified. Such activities include lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences; and

(2) Scientifically oriented material or risk management activities.

c. If the podiatrist utilizes conscious sedation, the podiatrist shall obtain a minimum of one hour of continuing education in the area of conscious sedation or other related topics.

d. A licensee who has prescribed opioids to a patient during a renewal cycle shall have obtained a minimum of one hour of continuing education regarding the United States Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options.

e. Combined maximum per biennium of 20 hours for the following continuing education source areas will not exceed:

(1) Presenting professional programs that meet the criteria listed in this subrule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Ten hours of credit for viewing videotaped presentations if the following criteria are met:

1. There is an approved sponsoring group or agency;

2. There is a facilitator or program official present;

3. The program official is not the only attendee; and

4. The program meets all the criteria in 645—222.3(149,272C).

(3) Ten hours of credit for computer-assisted instructional courses or programs pertaining to patient care and the practice of podiatric medicine and surgery. These courses and programs must be approved by the American Podiatric Medical Association or its affiliates and have a certificate of completion that includes the following information:

1. Date course/program was completed;

2. Title of course/program;

3. Number of course/program contact hours; and

4. Official signature or verification of course/program sponsor.

(4) Five hours of credit for reading journal articles pertaining to patient care and the practice of podiatric medicine and surgery. The licensee must pass a required posttest and be provided with a certificate of completion.

f. No office management courses will be accepted by the board.

g. Continuing education hours of credit equivalents for academic coursework per biennium are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

h. Credit is given only for actual hours attended.

These rules are intended to implement Iowa Code section 272C.2 and chapter 149.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 223
“Practice of Podiatry”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 149 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 149 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:20 to 10:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking provides Iowans, licensees, and their employers with definitions relevant to the practice of podiatrists and requirements for administering conscious sedation, for preventing HIV and HBV transmission, for unlicensed graduates of a podiatric college working as assistants, and for prescribing opioids. This rulemaking articulates practice standards and provides a scope of practice for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are costs associated with practice standards because there is often time, effort, and money associated with compliance. There are costs associated with administering and receiving sedation medications, reviewing guidance on transmitting illnesses, attending podiatric college, and prescribing

opioids. The Board of Podiatry does not have a mechanism for estimating what these total costs might be to the licensee.

Costs to the general public are associated with receiving care. The Board does not have a mechanism for estimating what these total costs might be because each patient's level of care is individualized depending on the patient's health care needs.

The cost to the agency is the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, answering questions from licensees and the public, administration of Board meetings, and more. An executive officer supports the work of this Board at approximately 0.20 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this rulemaking. The rulemaking provides standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing that they are receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

This is a small profession. There are approximately 248 licensed podiatrists who provide these services to Iowans. There are very few complaints submitted to this Board. In 2022, there was a total of 11 complaints submitted and one public disciplinary action issued. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession was not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Podiatry is regulated in all 50 states.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean lower-skilled individuals providing services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, answering questions from licensees and the public, administration of Board meetings, and more. An executive officer supports the work of this Board at approximately 0.20 FTE position. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This is a small profession. There are approximately 248 licensed podiatrists who provide these services to Iowans. There are very few complaints submitted to this Board. In 2022, there was a total of 11 complaints submitted and one public disciplinary action issued. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important

service to Iowans. If this profession were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Podiatry is regulated in all 50 states.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Licensing is the highest form of regulation. Lower forms of regulation could be viable, such as a registration. That said, podiatry is regulated in all 50 states. Podiatrists practice a form of medicine that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Currently, podiatrists are regulated in all 50 states. Podiatrists practice a form of medicine that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as registration as opposed to licensure. The Board ultimately decided that to ensure public safety and the integrity of the profession, licensure requirements should stay in effect. Currently, all 50 states regulate podiatrists. Not regulating this profession could jeopardize public safety and lead to serious injury for consumers. The Board believes regulations are necessary and critical to ensuring public safety, which is the paramount concern.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The rulemaking is meant to ensure public safety in terms of practice standards for podiatrists. While some licensees could be running a small business, some also work for large hospitals, clinics and retailers. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 223 and adopt the following **new** chapter in lieu thereof:

CHAPTER 223 PRACTICE OF PODIATRY

645—223.1(149) Definitions.

“*Ambulatory surgical center*” or “*ASC*” means an ambulatory surgical center that has in effect an agreement with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, in accordance with 42 CFR Part 416.

“*Conscious sedation*” means a depressed level of consciousness produced by the administration of pharmacological substances that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

645—223.2(149) Requirements for administering conscious sedation. A licensed podiatrist who holds a permanent license in good standing may use conscious sedation for podiatric patients on an outpatient basis in a hospital or ASC after the podiatrist has submitted to the board office an attestation on a form approved by the board.

223.2(1) The attestation shall include:

a. Evidence of successful completion within the past five years of a formal anesthesiology rotation in a residency program approved by the Council on Podiatric Medical Education (CPME); or

b. For a podiatrist who does not meet the requirements of paragraph 223.2(1) “*a.*,” an attestation with evidence that the podiatrist is authorized by the governing body of a hospital or ASC to use conscious sedation. This attestation must be received by the board prior to January 1, 2005.

223.2(2) The podiatrist will provide verification of current certification in Basic Cardiac Life Support (BCLS) or Advanced Cardiac Life Support (ACLS).

223.2(3) A podiatrist who has an attestation on file and continues to use conscious sedation will meet the requirements of 645—Chapter 222 at the time of license renewal. A minimum of one hour of continuing education in the area of conscious sedation or related topics is required beginning with the renewal cycle of July 1, 2004, to June 30, 2006. Continuing education credit in the area of conscious sedation may be applied toward the 40 hours of continuing education required for renewal of the license. In addition, the podiatrist will maintain current certification in BCLS or ACLS.

223.2(4) A podiatrist will only utilize conscious sedation in a hospital or ASC when the podiatrist has been granted clinical privileges by the governing body of the hospital or ASC in accordance with approved policies and procedures of the hospital or ASC.

223.2(5) It is a violation of the standard of care for a podiatrist to use conscious sedation agents that result in a deep sedation or general anesthetic state.

223.2(6) Reporting of adverse occurrences related to conscious sedation. A licensed podiatrist who has an attestation on file with the board must submit a report to the board within 30 days of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a result of conscious sedation. Included in the report will be the following:

a. Description of podiatric procedures;

b. Description of preoperative physical condition of patient;

c. List of drugs and dosage administered;

d. Description, in detail, of techniques utilized in administering the drugs;

e. Description of adverse occurrence, including:

- (1) Symptoms of any complications including, but not limited to, onset and type of symptoms;
- (2) Treatment instituted;
- (3) Response of the patient to treatment;

f. Description of the patient’s condition on termination of any procedures undertaken;

g. If a patient is transferred, a statement providing where and to whom; and

h. Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

223.2(7) Failure to report. Failure to comply with subrule 223.2(6) when the adverse occurrence is related to the use of conscious sedation may result in the podiatrist’s loss of authorization to administer conscious sedation or in other sanctions provided by law.

223.2(8) Record keeping. The patient’s chart must include:

a. Preoperative and postoperative vital signs;

- b.* Drugs administered;
- c.* Dosage administered;
- d.* Anesthesia time in minutes;
- e.* Monitors used;
- f.* Intermittent vital signs recorded during procedures and until the patient is fully alert and oriented with stable vital signs;
- g.* Name of the person to whom the patient was discharged; and
- h.* Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

223.2(9) Failure to comply with these rules is grounds for discipline.

645—223.3(139A) Preventing HIV and HBV transmission. Podiatrists will comply with the recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, or with the recommendations of the expert review panel established pursuant to Iowa Code section 139A.22(3) and applicable hospital protocols established pursuant to Iowa Code section 139A.22(1). Failure to comply will be grounds for disciplinary action.

645—223.4(149) Unlicensed graduate of a podiatric college. An unlicensed graduate of a podiatric college may function in the licensed podiatrist's office only as a podiatric assistant. The licensed podiatrist has full responsibility and liability for the unlicensed person.

223.4(1) Treatments, charting, and notations completed by the unlicensed graduate must be initialed by that person and countersigned by the licensed podiatrist.

223.4(2) An unlicensed graduate will not:

- a.* Be referred to as "doctor" during professional contact with patients.
- b.* Treat patients in the office without a licensed podiatrist present.
- c.* Perform surgical work without direct supervision of a licensed podiatrist.
- d.* Diagnose or prescribe medicine.
- e.* Take independent actions regarding diagnosis, treatment or prescriptions.
- f.* Visit nursing homes or make house calls without the presence of the licensed podiatrist.
- g.* Bill for any services.

645—223.5(149) Prescribing opioids. Podiatrists will review a patient's information contained in the prescription monitoring program database for each opioid prescription prior to prescribing, unless the patient is receiving inpatient hospice care or long-term residential facility care.

These rules are intended to implement Iowa Code chapters 139A, 149 and 514F.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 224
“Discipline for Podiatrists, Orthotists, Pedorthists, and Prosthetists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 148F, 149 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148F, 149
and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:20 to 10:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking provides protection to Iowans because it publicly defines disciplinary options when a podiatrist, orthotist, pedorthist, or prosthetist fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, licensees can be subject to discipline against their license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Podiatry has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the Board and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The rules in this chapter are related to standards of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care in medical journals, etc. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per violation up to a maximum of \$10,000 per public order.

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.20 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees regarding practice standards, continuing education, Board meeting administration, and more. The Podiatry Board receives a small number of complaints each year. In 2022, the Board received 11 complaints and issued public disciplinary action to one podiatrist. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rulemaking is ensuring public safety and maintaining a high level of care for Iowans. The Podiatry Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received 11 complaints and issued one public disciplinary action. The Podiatry Board has approximately 400 active licensees.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there is only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of podiatrists, orthotists, pedorthists, and prosthetists is a form of medicine that requires skill and precision.

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public and leaving the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this board at approximately 0.20 FTE position.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, no civil penalties were paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there is only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of podiatrists, orthotists, pedorthists, and prosthetists is a form of medicine that requires skill and precision. The Podiatry Board receives a low number of complaints and issues a small number of disciplinary actions. In 2022, the Board received 11 complaints and issued one public disciplinary action. The Board licenses a small number of professionals at approximately 400 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, podiatrists, orthotists, pedorthists, and prosthetists practice a form of medicine that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the podiatrist, orthotist, pedorthist, and prosthetist professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these disciplinary rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in ensuring that Iowans receive services from competent practitioners.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of practice standards for podiatrists, orthotists, pedorthists, and prosthetists. While some podiatrists, orthotists, pedorthists, or prosthetists likely are running a small business of their own, some also work for large organizations, such as hospital systems. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 224 and adopt the following **new** chapter in lieu thereof:

CHAPTER 224

DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PEDORTHISTS, AND PROSTHETISTS

645—224.1(148F,149,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

224.1(1) Prescribing opioids in dosage amounts exceeding what would be prescribed by a reasonably prudent prescribing practitioner engaged in the same practice.

224.1(2) Reserved.

645—224.2(148F,149,272C) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that the licensee is guilty of any of the following acts or offenses:

224.2(1) Self-prescribing or self-dispensing controlled substances.

224.2(2) Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

a. Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

b. Immediate family includes spouse or life partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life partner.

224.2(3) Prescribing or dispensing controlled substances outside the scope of the practice of podiatry.

These rules are intended to implement Iowa Code chapters 147, 148F, 149, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 225
“Continuing Education for Orthotists, Prosthetists, and Pedorthists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 148F and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148F and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:20 to 10:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

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Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for orthotists, prosthetists, and pedorthists. The rulemaking includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rule, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that orthotists, prosthetists, and pedorthists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Board of Podiatry is not privy to exact costs, but based on research estimates, the cost is around \$200 every two years for a licensee to meet these requirements.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is ensuring that orthotists, prosthetists, and pedorthists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offers these courses, so the Board is not privy to exact costs, but based on research estimates, the cost is around \$200 every two years for a licensee to meet these requirements. The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 30 hours of continuing education for orthotists and prosthetists, and 20 hours for pedorthists, every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.20 full-time equivalent (FTE) position, which includes answering questions from the public and licensees related to practice standards, continuing education, Board meeting administration, and more.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board has not recommended a reduction in hours.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce the amount of continuing education required. A review of surrounding states has shown that Iowa is in line with neighboring jurisdictions. Iowa requires 30 hours of continuing education for orthotists and prosthetists every two years, as do Oklahoma, Illinois, Florida, and Arkansas. Minnesota requires 40 hours every two years. Iowa requires 20 hours every two years for pedorthists. Oklahoma requires 11 hours every year, and Minnesota requires 40 hours every two years. Representatives of the Iowa Board reviewed the required hours and did not support reducing them.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring whether the Board would recommend lowering the continuing education requirements. The Board has considered a change of the total number of and frequency of continuing education hours and the safety of the public. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Orthotists, prosthetists, and pedorthists practice in a number of settings, including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. While some licensees likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Conversely, the entities that provide continuing education may face a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 225 and adopt the following **new** chapter in lieu thereof:

CHAPTER 225
CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—225.1(148F) Definitions.

“*ABC*” means the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated.

“*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.

“*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 podiatry.

“*BOC*” means the Board of Certification/Accreditation, International.

“*Continuing education*” means planned, organized learning acts acquired during 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.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

645—225.2(148F,272C) Continuing education requirements.

225.2(1) The biennial continuing education compliance period extends for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year.

a. Each biennium, each person who is licensed to practice as an orthotist in this state shall be required to complete a minimum of 30 hours of continuing education.

b. Each biennium, each person who is licensed to practice as a prosthetist in this state shall be required to complete a minimum of 30 hours of continuing education.

c. Each biennium, each person who is licensed to practice as a pedorthist in this state shall be required to complete a minimum of 20 hours of continuing education.

225.2(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.

a. The new orthotic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

b. The new prosthetic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

c. The new pedorthic licensee will be required to complete a minimum of 20 hours of continuing education per biennium for each subsequent license renewal.

225.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

225.2(4) No hours of continuing education will be carried over into the next biennium.

225.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—225.3(148F,272C) Standards.

225.3(1) General criteria. A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters that integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of that said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance including:
 - (1) Date, location, course title, and presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

225.3(2) Specific criteria for licensees.

a. Licensees may obtain continuing education hours of credit by attending workshops, conferences, symposiums, electronically transmitted courses, live interactive conferences, and academic courses that relate directly to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of orthotics, prosthetics, or pedorthics will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

b. Licensees may obtain continuing education hours of credit by teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of a course.

c. Continuing education hours of credit may be granted for any of the following activities not to exceed a maximum combined total of 15 hours for orthotists and prosthetists and 10 hours for pedorthists:

(1) Presenting professional programs that meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee will receive five hours of credit per page.

(3) Viewing videotaped presentations and electronically transmitted material that have a postcourse test if the following criteria are met:

1. There is a sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria specified in this rule.

(4) Participating in home study courses that have a certificate of completion and a postcourse test.

(5) Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.

(6) Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.

(7) Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

645—225.4(148F,272C) Audit of continuing education report. In addition to the requirements of 645—4.11(272C), proof of current BOC or ABC certification as an orthotist, prosthetist, or pedorthist will be accepted in lieu of individual certificates of completion for an audit.

These rules are intended to implement Iowa Code section 272C.2 and chapter 148F.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 240
“Licensure of Psychologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 154B.13, 154B.14, 272C.3, and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 147, 272C, 154B, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 to 9:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qab-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@idph.iowa.gov

Purpose and Summary

Proposed Chapter 240 sets minimum standards for entry into the psychology profession. Iowa residents, licensees, and employers benefit from the chapter since it articulates the processes by which individuals apply for licensure in the state of Iowa, as directed in statute. This includes the process for initial licensure, provisional, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. The fee for initial licensure is \$120. Licensees must also pay an examination fee of \$687.50. These costs are comparable to surrounding states. The initial licensure fee for Nebraska is \$183, Minnesota is \$500, Illinois is \$50, South Dakota is \$300, Kansas is \$150, and Missouri is \$150.

The licensee would also have costs related to educational requirements. The Board has not identified an exact cost of education for this field since it varies depending on the school the licensee chooses to attend to meet those requirements.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly .20 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed chapter. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide academic training for psychologists to obtain their license in Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. Because the cost of education is so variable depending on the institution the person attends, the Board is unable to put an exact cost on the cost of education or examination preparation.

Licensing fees are \$120 for an initial license and \$170 for each biennial renewal period.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which include managing applications for initial licenses, renewals and reinstatements. Staff salaries to support the work of the board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of psychologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive means of regulating this profession. The professional standards articulated in these rules are consistent with national best practices and recognize the highly sensitive nature of the services provided by psychologists. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a less restrictive means of regulating this profession. The professional standards articulated in these rules are consistent with national best practices and recognize the highly sensitive nature of the services provided by psychologists. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a less restrictive means of regulating this profession. The professional standards articulated in these rules are consistent with national best practices and recognize the highly sensitive nature of the services provided by psychologists. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for psychologists. While some psychologists likely are running a small business of their own, some also work for large corporations and hospitals. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 240 and adopt the following **new** chapter in lieu thereof:

PSYCHOLOGISTS

| | |
|-------------|--|
| CHAPTER 240 | LICENSURE OF PSYCHOLOGISTS |
| CHAPTER 241 | CONTINUING EDUCATION FOR PSYCHOLOGISTS |
| CHAPTER 242 | DISCIPLINE FOR PSYCHOLOGISTS |
| CHAPTER 243 | PRACTICE OF PSYCHOLOGY |
| CHAPTER 244 | PRESCRIBING PSYCHOLOGISTS |

CHAPTER 240
LICENSURE OF PSYCHOLOGISTS

645—240.1(154B) Definitions. For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*ASPPB*” means the Association of State and Provincial Psychology Boards.

“*Board*” means the board of psychology.

“*Certified health service provider in psychology*” means a person who works in a clinical setting, who is licensed to practice psychology and who has a doctoral degree in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders.

“*Clinical experience*” means the provision of health services in psychology by the applicant to individuals or groups of clients/patients. Clinical experience does not include teaching or research performed in an academic setting.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Licensee*” means any person licensed to practice as a psychologist or health service provider in psychology in the state of Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice psychology to an applicant who is or has been licensed in another jurisdiction.

“*Mandatory training*” means the requirements found in Iowa Code section 232.69.

“*National examination*” means the Examination for Professional Practice in Psychology (EPPP).

“*Provisional license*” means a license issued to a person who is completing a predoctoral internship or postdoctoral residency under supervision in order to satisfy the requirements for licensure.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—240.11(17A,147,272C) by which an inactive license is restored to active status.

“*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.

645—240.2(154B) Requirements for initial psychology licensure. The following criteria shall apply to licensure:

240.2(1) Submit a completed application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.16(147,154B).

240.2(2) Except as otherwise stated in these rules, no application will be considered by the board until:

a. Official copies of academic transcripts sent directly from the school to the board of psychology have been received by the board; and

b. Satisfactory evidence of the candidate's qualifications has been supplied in writing on the prescribed forms by the candidate's supervisors.

240.2(3) An applicant shall successfully pass the national examination.

240.2(4) The applicant shall have the national examination score sent directly from the ASPPB to the board.

240.2(5) Incomplete applications that have been on file in the board office for more than two years without additional supporting documentation shall be:

a. Considered invalid and shall be destroyed; or

b. Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

645—240.3(154B) Educational qualifications. An applicant for licensure to practice as a psychologist shall possess a doctoral degree in psychology.

240.3(1) At the time of an applicant's graduation:

a. The program from which the doctoral degree in psychology is granted must be:

(1) Accredited by the American Psychological Association; or

(2) Accredited by the Canadian Psychological Association; or

(3) Designated by the ASPPB/National Register; or

b. The applicant holds current board certification from the American Board of Professional Psychology; or

c. The applicant possesses a postdoctoral respecialization certificate from a program accredited by the American Psychological Association.

240.3(2) Foreign-trained psychologists who possess a doctoral degree in psychology and who do not meet the requirements of subrule 240.3(1) will:

a. Provide an equivalency evaluation of their educational credentials by the National Register of Health Service Psychologists, 1200 New York Avenue NW, Suite 800, Washington, D.C. 20005, telephone 202.783.7663, website www.nationalregister.org, or by an evaluation service with membership in the National Association of Credential Evaluation Services at www.naces.org. A certified translation of documents submitted in a language other than English shall be provided. The candidate will bear the expense of the curriculum evaluation and translation of application documents. The educational credentials must be equivalent to programs stated in subrule 240.3(1).

b. Submit evidence of meeting all other requirements for licensure stated in these rules.

645—240.4(154B) Examination requirements. An applicant will pass the national examination to be eligible for licensure in Iowa.

240.4(1) To be eligible to take the national examination, the applicant will:

a. Meet all requirements of subrules 240.2(1) and 240.2(2); and

b. Provide official copies of academic transcripts sent directly from the school to the board of psychology verifying completion of a doctoral degree in psychology in accordance with rule 645—240.3(154B).

240.4(2) The EPPP passing score shall be utilized as the Iowa passing score.

645—240.5(154B) Postdoctoral residency.

240.5(1) The postdoctoral residency may begin after all academic requirements for the doctoral degree, including completion of the predoctoral internship, have been completed. The postdoctoral residency shall consist of a minimum of 1,500 hours that are completed in no less than ten months.

240.5(2) During the postdoctoral residency, the supervisee will competently apply the principles of psychology under the supervision of a licensed psychologist who is actively licensed in the jurisdiction where the supervision occurs in accordance with the following:

a. The supervisee and supervisor will complete a supervision plan using the form provided by the board. The supervision plan must be submitted to the board if the supervisee is applying for or utilizing a provisional license.

b. A supervisor will not have more than three concurrent full-time supervisees or the equivalent in part-time supervisees. Full-time is defined as 40 hours per week.

c. The supervisee and supervisor will meet individually in person or via videoconferencing during each week in which postdoctoral residency hours are accrued, for no less than a total of 45 hours during the postdoctoral residency. Group supervision hours cannot count toward the 45 hours of individual supervision required.

d. The supervisor will provide supervision at all times, which means the supervisor will be readily available on site, or via electronic or telephonic means, at all times when the supervisee is providing services so that the supervisee may contact the supervisor for advice, assistance, or instruction. A supervisor will identify one or more licensed mental health providers who can be contacted for advice, assistance, or instruction during times in which the supervisor will not be readily available.

e. The supervisee and supervisor will have a crisis plan in place any time the supervisee is providing services and the supervisor is not on site in the same physical setting as the supervisee.

f. The supervisor will establish and maintain a level of supervisory contact consistent with established professional standards and be fully accountable in the event that professional, ethical or legal issues are raised.

g. The supervisor will provide training that is appropriate to the functions to be performed. The supervisee shall have the background, training, and experience that is appropriate to the functions performed. The supervisor shall not permit the supervisee to engage in any psychological practice that the supervisor cannot perform competently.

h. The supervisor and supervisee will ensure clients are informed regarding the supervisee's status and the sharing of information between the supervisee and supervisor.

i. The supervisor will have reasonable access to the clinical records corresponding to the work being supervised. The supervisor will countersign all written reports, clinical records and clinical communications as "Reviewed and Approved" by the supervisor.

j. All services will be offered in the name of the supervisor. The supervisee and supervisor will ensure that the supervisee uses a title in accordance with rule 645—240.13(154B,147).

k. The fee schedule and receipt of payment will remain the sole domain of the supervisor or employing agency.

l. The supervisor will maintain an ongoing record of supervision that details the types of activities in which the supervisee is engaged, the level of the supervisee's competence in each, and the type and outcome of all procedures.

m. The supervisor is responsible for determining the competency of the work performed by the supervisee and must honestly and accurately complete the supervision report at the conclusion of providing supervision.

645—240.6(154B) Certified health service provider in psychology.

240.6(1) Requirements for the health service provider in psychology. The applicant shall:

a. Verify at least one year of clinical experience in an organized health service training program that meets the requirements of subrule 240.6(2) and at least one year of clinical experience in a health service setting that meets the requirements for postdoctoral residency stated in rule 645—240.5(154B). Alternatively, an applicant may submit verification of current registration at the doctoral level by the National Register of Health Service Psychologists to verify completion of the required clinical experience.

b. Submit a completed application and nonrefundable application fee along with supporting documentation. Incomplete applications that have been on file in the board office for more than two years without additional supporting documentation shall be:

(1) Considered invalid and shall be destroyed; or
(2) Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

c. Renew the certificate biennially at the same time as the psychology license.

240.6(2) *Requirements of the organized health service training program.* Internship programs in professional psychology that are accredited by the American Psychological Association (APA) or the Canadian Psychological Association (CPA) or that hold membership in the Association of Psychology Postdoctoral and Internship Centers (APPIC) are deemed approved. Applicants completing an organized health service training program that is not accredited by the APA or the CPA, or is not APPIC-designated at the time the applicant completes the training shall cause documentation to be sent from the program to establish that the program:

- a. Provides the intern with a planned, programmed sequence of training experiences.
- b. Has a clearly designated doctoral-level staff psychologist who is responsible for the integrity and quality of the training program and is actively licensed by the board of psychology in the jurisdiction in which the program exists.
- c. Has two or more doctoral-level psychologists on the staff who serve as supervisors, at least one of whom is actively licensed by the board of psychology in the jurisdiction in which the program exists.
- d. Has supervision that is provided by staff members of the organized health service training program or by an affiliate of the organized health service training program who carries clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one or more doctoral-level psychologists.
- e. Provides training in a range of psychological assessment and treatment activities conducted directly with recipients of psychological services.
- f. Ensures that trainees have a minimum of 375 hours of direct patient contact.
- g. Includes a minimum of two hours per week (regardless of whether the internship is completed in one year or two years) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as case conferences involving a case in which the intern is actively involved, seminars dealing with clinical issues, cotherapy with a staff person including discussion, group supervision, and additional individual supervision.
- h. Has training that is at the postclerkship, postpracticum, and postexternship level.
- i. Has a minimum of two interns at the internship level of training during any period of training.
- j. Designates for internship-level trainees titles such as “intern,” “resident,” “fellow,” or other designation of trainee status.
- k. Has a written statement or brochure which describes the goals and content of the internship, states clear expectations for quantity and quality of trainees’ work and is made available to prospective interns.
- l. Provides a minimum of 1,500 hours of training experience that shall be completed in no less than 12 months within a 24-consecutive-month period.

645—240.7(154B) Requirements for provisional license.

240.7(1) *Predoctoral internship.* An applicant for a provisional license for purposes of completing a predoctoral internship shall provide the following:

- a. Submit a completed provisional application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.16(147,154B).
- b. A copy of the applicant’s acceptance letter for the predoctoral internship.
- c. Identification of the training director and the training director’s contact information.
- d. Evidence that the applicant is enrolled in an educational program that meets the requirements of rule 645—240.3(154B).

240.7(2) *Postdoctoral residency.* An applicant for a provisional license for purposes of completing a postdoctoral residency shall provide the following:

- a. Submit a completed application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.16(147,154B).
- b. Official copies of academic transcripts sent directly from the school establishing that the requirements stated in rule 645—240.3(154B) are met.

c. A completed supervision plan on the prescribed board form, signed by the applicant's supervisors. A change in supervisor or in the supervision plan requires submission of a new supervision plan on the prescribed board form.

240.7(3) Duration. The provisional license is effective for two years from the date of issuance. A provisional license issued for purposes of completing a predoctoral internship can be used for purposes of completing a postdoctoral residency until the provisional license expires. The provisional licensee shall submit a completed supervision plan on the prescribed board form, signed by the licensee's supervisors, prior to beginning the postdoctoral residency. A change in supervisor or in the supervision plan requires submission of a new supervision plan on the prescribed board form. A provisional license may be renewed one time for a period of two years upon submission of the following:

- a.* A provisional license renewal application;
- b.* A provisional license renewal fee; and
- c.* A current supervision plan as required in these rules.

645—240.8(147) Licensure by endorsement. An applicant who possesses a doctoral degree in psychology and has been a licensed psychologist at the doctoral level under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may license by endorsement any applicant from the District of Columbia or another state, territory, province, or foreign country who:

240.8(1) Submit a completed application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.16(147,154B).

240.8(2) Provides verification of license from the jurisdiction in which the applicant has most recently been licensed, and additional verifications if necessary to verify at least three years of an independent license as described in subrule 240.8(4), sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a.* Licensee's name;
- b.* Date of initial licensure;
- c.* Current licensure status; and
- d.* Any disciplinary action taken against the license.

240.8(3) Provides verification of a current Certificate of Professional Qualification (CPQ) issued by the ASPPB, or verification of a doctoral degree in psychology and an independent license to practice psychology in another jurisdiction for at least three years with no disciplinary history. Except as stated in subrule 240.3(2), applicants providing certification or verification are deemed to have met the requirements stated in paragraphs 240.8(4) "a" and "b." The board may license by endorsement any other applicant who:

a. Provides the official EPPP score sent directly to the board from the ASPPB or verification of the EPPP score sent directly from the state of initial licensure. The recommended passing score established by the ASPPB shall be considered passing.

b. Shows evidence of licensure requirements that are substantially equivalent to those required in Iowa by one of the following means:

(1) Provides:

1. Official copies of academic transcripts that have been sent directly from the school; and
2. Satisfactory evidence of the applicant's qualifications in writing on the prescribed forms by the applicant's supervisors. If verification of professional experience is not available, the board may consider submission of documentation from the jurisdiction in which the applicant is currently licensed or equivalent documentation of supervision; or

(2) Has an official copy of one of the following certifications sent directly to the board from the certifying organization:

1. Current credentialing at the doctoral level as a health service provider in psychology by the National Register of Health Service Providers in Psychology.

2. Board certification by the American Board of Professional Psychology that was originally granted on or after January 1, 1983.

240.8(4) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—240.9(154B) Exemption to licensure. Psychologists residing outside the state of Iowa and intending to practice in Iowa under the provisions of Iowa Code section 154B.3(5) shall complete and submit the application for the exemption to licensure and the nonrefundable licensure fee specified in rule 645—5.16(147,154B).

240.9(1) The applicant shall provide a summary of the intent to practice and a verification of the license in the applicant's jurisdiction of residence, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

240.9(2) The exemption must be issued prior to practice in Iowa. The exemption shall be valid for 10 consecutive business days or not to exceed 15 business days in any 90-day period.

645—240.10(147) License renewal.

240.10(1) The biennial license renewal period for a license to practice psychology shall begin on July 1 of even-numbered years and end on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

240.10(2) 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 date two years later.

240.10(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—241.2(272C) and the mandatory reporting requirements of subrule 240.10(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.

240.10(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 as required by Iowa Code section 232.69(3) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 240.10(4) "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 240.13(4) "e."

c. The course(s) shall be the curriculum provided by the Iowa department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs 240.13(4) "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

- (1) Is engaged in active duty in the military service of this state or the United States.
- (2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in rule 645—4.14(272C).

f. The board may select licensees for audit of compliance with the requirements in paragraphs 240.10(4)“a” to “e.”

240.10(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

240.10(6) A person licensed to practice as a psychologist shall keep the person’s license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

240.10(7) Late renewal.

a. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.16(3).

b. To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

240.10(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a psychologist or health service provider in psychology in Iowa until the license is reactivated. A licensee who practices as a psychologist or health service provider in psychology in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—240.11(147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

240.11(1) Submit a reactivation application.

240.11(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

240.11(3) Provide verification of the license from the jurisdiction in which the applicant has most recently been licensed sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- a.* Licensee’s name;
- b.* Date of initial licensure;
- c.* Current licensure status; and
- d.* Any disciplinary action taken against the license.

240.11(4) Provide verification of a current active license in another jurisdiction at the time of application or verification of completion of continuing education taken within two years of the application. If the license has been inactive for less than five years, the applicant must submit verification of 40 hours of continuing education, and if the license has been inactive for more than five years, the applicant must submit verification of 80 hours of continuing education.

645—240.12(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—240.14(17A,147,272C) prior to practicing as a psychologist or health service provider in psychology in this state.

645—240.13(154B,147) Title designations.

240.13(1) Students who are enrolled in an education program that satisfies the requirements of subrule 240.3(1) and who are completing the predoctoral internship may be designated “psychology intern” or “intern in psychology.”

240.13(2) Applicants for licensure who have met educational requirements and who are completing the postdoctoral residency to be eligible for licensure may be designated “psychology resident,” “resident in psychology,” “psychology postdoctoral fellow,” or “postdoctoral fellow in psychology.” The designation of “resident” shall not be used except during a postdoctoral residency that meets the requirements of rule 645—240.6(154B).

240.13(3) Persons who possess provisional licenses shall add the designation “provisional license in psychology” following the “resident,” “intern,” or “fellow” designation.

645—240.14(154B) Psychologists’ supervision of persons other than postdoctoral residents in a practice setting.

240.14(1) This rule applies when a psychologist is supervising individuals who are not licensed or who are provisionally licensed and completing the predoctoral internship. This rule does not apply to supervision of an individual completing a postdoctoral residency in accordance with rule 645—240.6(154B), regardless of whether the individual is provisionally licensed or not.

240.14(2) The supervising psychologist will:

a. Be vested with administrative control over the functioning of assistants in order to maintain ultimate responsibility for the welfare of every client. When the employer is a person other than the supervising psychologist, the supervising psychologist must have direct input into administrative matters.

b. Have sufficient knowledge of all clients, including face-to-face contact when necessary, in order to plan effective service delivery procedures. The progress of the work will be monitored through such means as will ensure that full legal and professional responsibility can be accepted by the supervisor for all services rendered. Supervisors will also be available for emergency consultation and intervention.

c. Provide work assignments that are commensurate with the skills of the supervisee. All procedures will be planned in consultation with the supervisor.

d. Work in the same physical setting as the supervisee, unless the supervisee is receiving formal training pursuant to the requirements for licensure as a psychologist. For supervisees working off site while receiving formal licensure training, ensure the off-site location has a licensed mental health provider or primary care provider on site whenever the supervisee is working for purposes of providing emergency consultation.

e. Make public announcement of services and fees; contact with laypersons or the professional community will be offered only by or in the name of the supervising psychologist. Titles of unlicensed persons must clearly indicate their supervised status.

f. Provide specific information to clients when an unlicensed person delivers services to those clients, including disclosure of the unlicensed person’s status and information regarding the person’s qualifications and functions.

g. Inform clients of the possibility of periodic meetings with the supervising psychologist at the client’s, the supervisee’s or the supervisor’s request.

h. Provide for setting and receipt of payment that will remain the sole domain of the employing agency or supervising psychologist.

i. Establish and maintain a level of supervisory contact consistent with established professional standards, and be fully accountable in the event that professional, ethical or legal issues are raised.

j. Provide a detailed job description in which functions are designated at varying levels of difficulty, requiring increasing levels of training, skill and experience. This job description will be made available to representatives of the board and service recipients upon request.

k. Be responsible for the planning, course, and outcome of the work. The conduct of supervision shall ensure the professional, ethical, and legal protection of the client and of the unlicensed persons.

l. Countersign all written reports, clinical records and clinical communications as “Reviewed and Approved” by the supervising psychologist.

These rules are intended to implement Iowa Code chapters 17A, 147, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 241
“Continuing Education for Psychologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 154B.13, 154B.14, 272C.3, and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 147, 272C, 154B, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 to 9:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

Proposed Chapter 241 sets forth continuing education requirements for psychologists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that psychologists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no direct costs to the public. There is a direct cost to the licensee, who must pay for the continuing education required. Private industry offers these courses, so the Board is not privy to exact costs. Based on research estimates, courses range from \$0 per hour to \$100 per hour. Licensees have multiple options, and the Board allows for online coursework, which increases the availability of free or low-cost options.

Costs to the agency are the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.20 full-time equivalent (FTE) position, which includes questions from the

public and licensees such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that psychologists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry offers these courses, so the Board is not privy to exact costs. Based on research estimates, courses range from \$0 per hour to \$100 per hour. Licensees have multiple options, and the Board allows for online coursework, which increases the availability of free or low-cost options.

The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 40 hours of continuing education for these license types every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.20 FTE position, which includes questions from the public and licensees such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

Staff salaries to support the work of the board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. This would also mean a loss of revenue for the private industry organizations that offer continuing education programs.

Staff held conversations with Board members inquiring if the Board would recommend lowering the continuing education requirements. The Board did not recommend a change in continuing education hours.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less restrictive alternative would be to reduce the amount of continuing education required. Iowa requires 40 hours of continuing education every two years. A review of surrounding states indicates Illinois and Nebraska require 24 hours; Minnesota, Missouri, and South Dakota require 40 hours; and Kansas requires 50 hours.

Staff held conversations with Board members inquiring if the Board would recommend lowering the continuing education requirements. The Board did not recommend a change in continuing education hours.

The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. These revisions support this effort.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with Board members inquiring if the Board would recommend lowering the continuing education requirements. The Board did not recommend a change in continuing education hours.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for psychologists. While some psychologists likely are running a small business of their own, some also work for large corporations and hospitals. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

The proposed rules maintain the number of continuing education hours. The cost of continuing education is estimated at \$0 to \$100 per hour.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 241 and adopt the following **new** chapter in lieu thereof:

CHAPTER 241
CONTINUING EDUCATION FOR PSYCHOLOGISTS

645—241.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

“*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.

“*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 psychology.

“*Continuing education*” means planned, organized learning acts 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.

“*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 independently as a psychologist in the state of Iowa and does not include persons with provisional licenses.

“*Practice of psychology*” means the application of established principles of learning, motivation, perception, thinking, psychophysiology and emotional relations to problems, behavior, group relations, and biobehavior by persons trained in psychology for compensation or other personal gain. The application of principles includes, but is not limited to, counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships. The practice of psychology also means measuring and testing personality, mood-motivation, intelligence/aptitudes, attitudes/public opinion, and skills; the teaching of such subject matter; and the conducting of research on the problems relating to human behavior.

645—241.2(272C) Continuing education requirements.

241.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of even-numbered years and ending on June 30 of even-numbered years. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board.

241.2(2) Requirements of 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 need to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

241.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours will be in accordance with these rules.

241.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

241.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

241.2(6) No hours of continuing education are required to renew a provisional license.

645—241.3(154B,272C) Standards.

241.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance including:
 - (1) Date, location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

241.3(2) Specific criteria.

a. For the second license renewal, licensees shall obtain six hours of continuing education pertaining to the practice of psychology in either of the following areas: Iowa mental health laws and regulations, or risk management.

b. For all renewal periods following the second license renewal, licensees shall obtain six hours of continuing education pertaining to the practice of psychology in any of the following areas: ethical issues, federal mental health laws and regulations, Iowa mental health laws and regulations, or risk management. For all board members, a maximum of two of these hours may be obtained by providing service as a member of the board as follows:

- (1) One hour of credit for attendance and participation at a minimum of three regular quarterly board meetings during the license biennium, or
- (2) Two hours of credit for attendance and participation at a minimum of six regular quarterly board meetings during the license biennium.

c. A licensee may obtain the remainder of continuing education hours of credit by:

(1) Completing training to comply with mandatory reporter training requirements, as specified in 645—subrule 240.13(4). Hours reported for credit shall not exceed the hours required to maintain compliance with required training.

(2) Attending programs/activities that are sponsored by the American Psychological Association or the Iowa Psychological Association.

(3) Attending workshops, conferences, or symposiums that meet the criteria in subrule 241.3(1).

(4) Completing academic coursework that meets the criteria set forth in these rules. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(5) Completing home study courses for which a certificate of completion is issued.

(6) Completing electronically transmitted courses for which a certificate of completion is issued.

(7) Conducting scholarly research, the results of which are published in a recognized professional publication. In order to claim such credit, the licensee must attest to the hours actually spent conducting research, demonstrate that the research is integrally related to the practice of psychology, explain how the research advances the licensee's knowledge in the field, and provide the published work.

(8) Preparing new courses on material that is integrally related to the practice of psychology and is beyond entry level. In order to claim such credit, the licensee must: attest that the licensee has not taught the course in the past or that the licensee has not substantially altered the course content; request a specific amount of continuing education credit; describe how the course is integrally related to the practice of the profession and advances the licensee's knowledge in the field; and supply a course syllabus that supports the licensee's request for credit.

(9) Presenting to other professionals. A licensee may receive credit on a one-time basis for presenting continuing education programs that meet the criteria of subrule 241.3(1). Two hours of credit will be awarded for each hour of presentation.

d. A combined maximum of 30 hours of credit per biennium may be used for scholarly research, preparation of new courses, and presentations to other professionals.

These rules are intended to implement Iowa Code section 272C.2 and chapter 154B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 242
“Discipline for Psychologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 154B.13, 154B.14, 272C.3, and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 147, 272C, 154B, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 to 9:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

Proposed Chapter 242 provides protection to Iowans because it provides required professional standards for psychologists. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in Iowa. When professional standards are not met, a licensee can be subject to discipline against the license. Iowans have the ability to submit a complaint to the Board of Psychology, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the Board’s professions and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are associated with costs to the licensee. The licensee is responsible for obtaining the necessary prerequisite training and education to meet the standards of the profession and comply with the ethical standards laid out in this

chapter. The licensee is responsible for the costs of obtaining and maintaining this knowledge. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Civil penalties are capped at \$1,000.

Costs to the agency are the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.20 full-time equivalent (FTE) position. This additionally includes responding to questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this chapter is to ensure public safety and maintain a high level of care for Iowans. The Board received 10 complaints in 2021 and 12 complaints in 2022. The Board initiated one public discipline action during that two-year period. Psychologists routinely provide mental health services to Iowans. Licensees who fail to meet practice standards have the potential to inflict serious harm to vulnerable Iowans who receive their services, so the Board believes that regulation is necessary.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of psychology includes the provision of highly sensitive services to Iowa patients, and the potential for patient harm is high without appropriate safeguards in place to protect against inappropriate practices.

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive care from competent and safe practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.20 FTE position. This additionally includes responding to questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the state. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, there were not any civil penalty funds paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of psychology includes the provision of highly sensitive services to Iowa patients, and the potential for patient harm is high without appropriate safeguards in place to protect against inappropriate practices. The Board received 10 complaints in 2021 and 12 complaints in 2022. The Board initiated one public discipline action during that two-year period. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive care from competent and safe practitioners.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative for public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive care from competent and safe practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only the civil penalties that may be imposed when persons imply or represent themselves, or an individual they employ, to be psychologists when they are not licensed. This is unique to the psychologist profession and excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these disciplinary rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only the civil penalties that may be imposed when persons imply or represent themselves, or an individual they employ, to be psychologists when they are not licensed. This is unique to the psychologist profession and excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these disciplinary rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for psychologists, many of whom are running a small business of their own. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 242 and adopt the following **new** chapter in lieu thereof:

CHAPTER 242
DISCIPLINE FOR PSYCHOLOGISTS

645—242.1(147,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

Failure to comply with the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association, as published in the December 2002 edition of American Psychologist and including amendments effective January 1, 2017, hereby adopted by reference. Copies of the Ethical Principles of Psychologists and Code of Conduct may be obtained from the American Psychological Association's website at www.apa.org.

This rule is intended to implement Iowa Code chapters 147, 154B and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 243
“Practice of Psychology”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 154B.13, 154B.14, 272C.3, and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 147, 272C, 154B, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 to 9:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qab-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

Proposed Chapter 243 provides Iowans, licensees, and their employers with practice guidance and requirements relevant to the practice of psychologists. The chapter provides guidance on what is considered appropriate and what is not appropriate practice. Categories include access to patient records, psychological testing, judicial proceedings, telepsychology, and recordkeeping.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are often costs associated with licensee compliance with the practice standards outlined in this chapter. Members of the public would have costs associated with the services they are seeking to receive. Each licensee’s practice has different variables, such as number of clients seen, nature of services provided, how services are delivered (i.e., telehealth or in person), administrative support, etc. The Board of Psychology does not have a mechanism for estimating what these total costs might be to the public or to the licensee for compliance with this chapter.

Costs to the agency are the staff time needed to manage the full scope of Board activities, which include oversight of practice standards, questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.20 full-time equivalent (FTE) position. Staff salaries are covered by the Licensing and Regulation Fund established

in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this chapter. The chapter provides standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing they are receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are approximately 976 active licensees who provide mental health services to Iowans. The Board received 10 complaints against licensees in 2021 and 12 complaints in 2022. The Board initiated one public discipline action over this two-year period. The Board believes that the benefits achieved justify the costs because the rules provide clear guardrails for providing these important services to Iowans. If this profession were not regulated, it could mean that Iowans who are receiving mental health services could be placed at risk. Psychology is regulated in all 50 states.

Members of the public would have costs associated with the services they are seeking to receive. Each licensee's practice has different variables, such as number of clients seen, nature of services provided, how services are delivered (i.e., telehealth or in person), administrative support, etc. The Board does not have a mechanism for estimating what these total costs might be to the public or to the licensee for compliance with this chapter.

Staff salaries are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage the full scope of Board activities, which include oversight of practice standards, questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.20 FTE position. Staff salaries are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact to state revenues.

Staff salaries are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are approximately 976 active licensees who provide mental health services to Iowans. The Board received 10 complaints against licensees in 2021 and 12 complaints in 2022. The Board initiated one public discipline action over this two-year period. The Board believes that the benefits achieved justify the costs because the rules provide clear guardrails for providing these important services to Iowans. If this profession were not regulated, it could mean that Iowans who are receiving mental health services could be placed at risk. Psychology is regulated in all 50 states.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Licensing is the highest form of regulation. Lower forms of regulation such as registration or certification could be utilized to regulate the profession; however, the Board would have significant concerns with this approach. The professional standards articulated in these rules are consistent with national best practices and recognize the highly sensitive nature of the services provided by psychologists. Reducing these standards would increase the potential for inappropriate or dangerous practices occurring in Iowa.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Licensing is the highest form of regulation. Lower forms of regulation such as registration or certification could be utilized to regulate the profession; however, the Board would have significant concerns with this approach. The professional standards articulated in these rules are consistent with national best practices and recognize the highly sensitive nature of the services provided by psychologists. Reducing these standards would increase the potential for inappropriate or dangerous practices occurring in Iowa.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board ultimately decided that to ensure public safety and the integrity of the profession, licensure requirements should stay in effect. The professional standards articulated in these rules are consistent with national best practices and recognize the highly sensitive nature of the services provided by psychologists. Reducing these standards would increase the potential for inappropriate or dangerous practices occurring in Iowa. Psychology is regulated in all 50 states.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for psychologists, many of whom are running a small business of their own. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 243 and adopt the following **new** chapter in lieu thereof:

CHAPTER 243 PRACTICE OF PSYCHOLOGY

645—243.1(154B) Definitions.

“*APA*” means the American Psychological Association.

“*Clinical records*” means records created by a licensee regarding the observation and treatment of patients, such as progress notes, but does not include psychotherapy notes.

“*Examinee*” means a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

“*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996 and related regulations promulgated thereunder.

“*Licensee*” or “*licensed*” means an individual with an active license to practice psychology, including a provisional license, or a certificate of exemption issued by the board.

“*Patient*” means an individual under the care of a licensee in a clinical role and is synonymous with the term client.

“*Personal representative*” means a person authorized to act on behalf of the patient in making health care-related decisions such as a parent or legal guardian, an individual with a health care power of attorney, an individual with a general power of attorney or durable power of attorney that includes the power to make health care decisions, or a court-appointed legal guardian.

“*Psychotherapy notes*” means notes recorded by a licensee documenting or analyzing the contents of a conversation during a private therapy session with a patient, or a group, joint, or family therapy session, that are maintained separately from the patient’s clinical records. Psychotherapy notes excludes medication prescription monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of any clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

“*Telepsychology*” means the provision of psychological services using telecommunication technologies.

“*Test data*” means raw and scaled scores, patient responses to test questions or stimuli, and notes and recordings concerning patient statements and behavior during an examination.

“*Test materials*” means the test questions, scoring keys, protocols, and manuals that do not include personally identifying information about the subject of the test.

645—243.2(147,154B,272C) Purpose and scope. The purpose of this chapter is to set the minimum standards of practice for licensees practicing in Iowa. The practice of psychology is occurring in Iowa if the patient or examinee is located in Iowa. Licensees will ensure any interns or residents under supervision adhere to the minimum standards of practice and must comply with the requirements set forth in rule 645—240.9(154B). The APA Code of Ethics is applicable and enforceable to the extent it does not conflict with any standards of practice set forth in this chapter. A licensee may be disciplined for any violation of this chapter or the APA Code of Ethics.

645—243.3(154B) Access to records.

243.3(1) *Clinical records generally.* When records are requested along with a signed release from the patient or the patient’s personal representative, a licensee will provide requested clinical records in a timely manner unless there is a ground for denial under HIPAA.

243.3(2) *Psychotherapy notes.* A licensee is not required to release psychotherapy notes in response to a signed release; if a licensee chooses to release psychotherapy notes, a signed release specifically authorizing the release of those notes will be provided.

243.3(3) *Substance use disorder treatment programs.* Licensees who practice in a federally assisted substance use disorder treatment program, also known as a part 2 program, are prohibited from disclosing any information that would identify a patient as having a substance use disorder unless the patient provides written consent in compliance with part 2 requirements.

243.3(4) *Clinical records of minor patients.* A minor patient is a patient who is under the age of 18 and is not emancipated. A licensee is not required to release the clinical records of a minor patient to the minor’s personal representative if releasing such records is not in the minor’s best interest. When a minor patient reaches the age of 18, the clinical records belong to the patient.

243.3(5) *Clinical records of deceased patients.* A licensee will provide the clinical records of a deceased patient to the deceased patient's executor upon a written request accompanied by a copy of the patient's death certificate and a copy of the legal document identifying the requestor as the patient's executor.

243.3(6) *Forensic records.* A licensee will provide forensic records consistent with the APA Specialty Guidelines for Forensic Psychology.

243.3(7) *Board.* A licensee shall provide clinical records, test data, or forensic records to the board as requested during the investigation of a complaint. A licensee is not required to obtain a patient release to send such information to the board because the board is a health oversight agency.

243.3(8) *Exceptions.* These rules do not apply when there is a legal basis for not disclosing requested information.

645—243.4(154B) Psychological testing. A licensee may administer psychological tests and assessments to a patient or examinee if the licensee has appropriate training for any psychological test or assessment utilized and the test or assessment is scientifically founded.

243.4(1) *Use of proctors.* A licensee may delegate the administration of a standardized test, intelligence test, or objective personality assessment to an appropriately trained individual. The licensee is responsible for supervising any proctors.

243.4(2) *Release of test data.* A licensee will not provide test data to any person, with the exception that the test data with proper written release, may be disclosed to a licensed psychologist designated by the patient or examinee. A psychologist who receives test data in this manner may not further disseminate the test data.

243.4(3) *Release of test materials.* A licensee shall not disclose test materials to any person, except for another licensed psychologist who has been designated in writing by the subject of a psychological test to receive the records associated with the psychological testing of the subject. A licensee shall not disclose test materials in any administrative, judicial, or legislative proceeding.

645—243.5(154B) Judicial proceedings. Prior to participating in a judicial proceeding, a licensee will become familiar with the rules governing the proceeding. A licensee will understand and clearly identify the licensee's role in the proceeding.

243.5(1) *Licensure.* A license to practice psychology in Iowa or an exemption from licensure is not required solely to testify as an expert witness in court, if the psychologist did not personally examine the examinee. A psychologist who personally examines an examinee located in Iowa for the purpose of providing an expert opinion is required to be licensed or exempt from licensure at the time of the evaluation.

243.5(2) *Custody evaluations.* A licensee who performs a child custody evaluation will comply with the APA Guidelines for Child Custody Evaluations in Family Law Proceedings.

645—243.6(154B) Telepsychology. A psychologist may practice telepsychology provided the following are met:

243.6(1) The psychologist must be licensed or be exempt from licensure in the jurisdiction where the patient or examinee is located.

243.6(2) Prior to initiating telepsychology with a new patient or examinee, a licensee will take reasonable steps to verify the identity and location of the patient or examinee.

243.6(3) A licensee will ensure informed consent for telepsychology includes a description of any limitations of services as a result of the technology utilized.

243.6(4) A licensee will gain competency in the use of a particular technology prior to utilizing it in practice. A licensee shall only use technologies that are secure and functioning properly.

243.6(5) A licensee will apply the same ethical and professional standards of care and professional practice that are required when providing in-person psychological services. If the same standard of care cannot be met with telepsychology, a licensee will not utilize telepsychology.

645—243.7(154B) Records. A licensee will complete clinical records as soon as practicable to ensure continuity of services. All clinical records shall be completed within 30 days after the service or evaluation is complete unless there are significant extenuating circumstances. Clinical records and psychotherapy notes will be retained for at least seven years after the last date of service, or until at least three years after a minor reaches the age of 18, whichever is later. Forensic records will be completed and retained consistent with the APA Specialty Guidelines for Forensic Psychology.

These rules are intended to implement Iowa Code chapters 147, 154B, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 244
“Prescribing Psychologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 154B.13, 154B.14,
272C.3, and 272C.4

State or federal law(s) implemented by the rulemaking: 147, 272C, 154B, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 to 9:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/bfq-qaeb-nwu
Or dial: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

Proposed Chapter 244 lays out the minimum standards for education and practice of psychologists with a conditional prescribing certificate and psychologists with a prescribing certificate. Members of the public, licensees, training programs, and employers benefit from having a clear understanding of the minimum standards for appropriate training and practice in this state. Requirements include the application process, minimum educational qualifications, and supervision requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public; however, there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. The licensee must complete a postdoctoral clinical psychopharmacology master’s degree. The Board of Psychology has not identified an exact cost of education because it varies depending on the school the licensee chooses to attend to meet the educational requirements.

A licensed psychologist seeking a conditional prescription certificate must pay an application fee of \$270 (application fees are addressed in 645—Chapter 5). The conditional prescription certificate is valid for a period of four years and authorizes a psychologist to prescribe psychotropic medications to patients with mental disorders under supervision in accordance with the requirements of the chapter.

Once the licensee has completed the requirements of supervised practice, the licensee may apply for a prescription certificate and pay an application fee of \$60. The biennial renewal fee is \$60.

Prescribing psychologists are licensed in Guam, New Mexico, Louisiana, Idaho, Illinois, and Colorado. The application fees for a conditional prescription certificate are comparable to Iowa's: Guam (\$125), New Mexico (\$125), Louisiana (\$275), Idaho (\$250), and Illinois (\$150). Colorado recently passed legislation to license prescribing psychologists; therefore, no fee information is available at this time.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.20 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed chapter. The chapter clearly articulates appropriate minimum standards for safe practice as a means of protecting patient safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no direct cost to the general public; however, there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee.

The licensee must complete a postdoctoral clinical psychopharmacology master's degree. The Board has not identified an exact cost of education since it varies depending on the school the licensee chooses to attend to meet the educational requirements.

Application fees are \$270 for a conditional prescription certificate and \$60 for a prescription certificate. The biennial renewal fee for a prescription certificate is \$60.

Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.20 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.20 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues as a result of this rulemaking. Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.20 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated with competent and qualified practitioners. This is especially important given the highly sensitive nature of the psychotropic medications that these licensees are allowed to prescribe once they have complied with these rules and statute.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive means of regulating psychologist prescribing. The professional standards articulated in these rules are consistent with those established by the handful of other states that license this practice and recognize the highly sensitive nature of the services being provided. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a less restrictive means of regulating psychologist prescribing. The professional standards articulated in these rules are consistent with those established by the handful of other states that license this practice and recognize the highly sensitive nature of the services being provided. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a less restrictive means of regulating psychologist prescribing. The professional standards articulated in these rules are consistent with those established by the handful of other states that license this practice and recognize the highly sensitive nature of the services being provided. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for psychologists. While some psychologists likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 244 and adopt the following **new** chapter in lieu thereof:

CHAPTER 244 PRESCRIBING PSYCHOLOGISTS

645—244.1(148,154B) Definitions—joint rule.

“*APA*” means the American Psychological Association.

“Applicant” means a psychologist applying for a conditional prescription certificate.

“Board” means the Iowa board of psychology.

“Board of medicine” means the Iowa board of medicine.

“Collaborating physician” means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall specialize in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

“Conditional prescribing psychologist” means a person licensed to practice psychology in Iowa who holds an active conditional prescription certificate. This term does not include prescribing psychologists.

“Conditional prescription certificate” means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication under the supervision of a supervising physician.

“CSA registration” means a Controlled Substance Act registration issued by the Iowa board of pharmacy authorizing a psychologist to possess and prescribe controlled substances.

“DEA registration” means a mid-level practitioner registration with the Drug Enforcement Administration authorizing a psychologist to possess and prescribe controlled substances.

“Joint rule” means a rule adopted by agreement of the board of psychology and the board of medicine through the joint rule-making process.

“Mental disorder” means a disorder which is defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or contained within the mental and behavioral disorders chapter of the most recent version of the International Classification of Diseases.

“Prescribing psychologist” means a person licensed to practice psychology in Iowa who holds an active prescription certificate. This term does not include conditional prescribing psychologists.

“Prescription certificate” means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication.

“Primary care physician” means a person licensed to practice medicine and surgery or osteopathic medicine in Iowa who is responsible for the ongoing medical care of a patient.

“Psychologist” means a person licensed to practice psychology in Iowa.

“Psychotropic medication” means a medication that shall not be dispensed or administered without a prescription and that has been explicitly approved by the federal Food and Drug Administration for the treatment of a mental disorder, as defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the most recent version of the International Classification of Diseases. “Psychotropic medication” does not include narcotics.

“Supervising physician” means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who supervises a conditional prescribing psychologist. A supervising physician shall specialize in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

“Training director” means an employee of the psychopharmacology training program who is primarily responsible for directing the training program.

“Training physician” means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who provides training to a psychologist as part of the clinical experience and practicum described in rule 645—244.3(148,154B). A training physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A training physician shall be approved by the psychopharmacology training program.

645—244.2(154B) Conditional prescription certificate. A conditional prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders under supervision in accordance with the requirements of this chapter.

244.2(1) Application. Unless a basis for denial exists in accordance with rule 645—244.9(154B), the board shall issue a conditional prescription certificate to an applicant who satisfies the following requirements:

a. Holds an active license to practice psychology in Iowa and an active health service provider certification issued by the board. Both the license and the health service provider certification must be in good standing.

b. Meets the educational requirements set forth in rule 645—244.3(148,154B). Official academic transcripts shall be sent directly from the school to the board.

c. Submits a supervision plan in accordance with subrule 244.4(1).

d. Possesses malpractice insurance that covers the prescribing of psychotropic medications.

e. Submits a completed application and a nonrefundable application fee of \$270.

244.2(2) Term. A conditional prescription certificate shall be valid for a period of four years from the date of issuance. The board shall not renew a conditional prescription certificate unless a conditional prescribing psychologist cannot complete the requirements of supervised practice within four years due to extenuating circumstances. A conditional prescribing psychologist may request an extension of a conditional prescription certificate when extenuating circumstances exist to provide additional time for the requirements of supervised practice to be met.

645—244.3(148,154B) Educational requirements for conditional prescription certificate—joint rule. An applicant for a conditional prescription certificate shall have completed a program of study designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The program must have included didactic instruction, a clinical experience, and a practicum satisfying the requirements of this rule. A minimum of 40 hours of basic training on clinical assessment skills shall be included as part of the program's didactic instruction.

244.3(1) Degree. An applicant shall possess a postdoctoral master of science degree in clinical psychopharmacology from a program designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The degree program must be a minimum of 30 credit hours not including the practicum and shall include coursework in basic science, neuroscience, clinical medicine, pathological basis of disease, clinical pharmacology, psychopharmacology, and professional, ethical and legal issues. A minimum of one-third of the coursework must be completed in a live interactive format. A program must be designated by the APA at the time the degree is conferred.

244.3(2) Clinical experience. An applicant shall have completed a clinical experience in accordance with the requirements of this subrule. During the clinical experience, a psychologist shall learn clinical assessment techniques and pathophysiology through direct observation and hands-on training with a training physician. During the clinical experience, a psychologist shall become competent in health history interviews, physical examinations, and neurological examinations with a medically diverse patient population. The clinical experience must be associated with the psychopharmacology training program from which the psychologist obtained the postdoctoral master of science degree in clinical psychopharmacology.

a. Scope. At the beginning of the clinical experience, the psychologist shall directly observe the training physician performing clinical assessments of patients. After the training physician determines the psychologist has gained sufficient knowledge, the clinical experience shall transition to the psychologist's performance of clinical assessments of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may perform clinical assessments of patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients and is reviewing all medical records. A psychologist and a training physician shall have ongoing discussions regarding the psychologist's clinical assessment skills and progress in the clinical experience.

b. Minimum experience. The clinical experience shall consist of a minimum of 600 patient encounters that shall be completed by the end of the practicum.

c. Conflict of interest. A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

d. Milestones. To satisfactorily complete the clinical experience, a psychologist shall demonstrate competency in each of the following:

(1) Perform a health history interview to obtain pertinent information regarding a patient's chief complaint, history of the present illness, past medical and surgical history, family history, allergies, medications, and psychosocial history. The psychologist shall perform a review of systems to elicit a health history and shall appropriately document the health history.

(2) Perform a physical examination in a logical sequence, ensuring appropriate positioning of the patient, proper patient draping, and proper application of the principles of asepsis throughout the examination. The psychologist shall verbalize and assess the components of a general survey and be able to accurately assess all of the following: vital signs, including pulse, respiration, and blood pressure; skin, hair and nails; head, face and neck; eyes; ears, nose, mouth and throat; thorax, lungs and axillae; heart; peripheral vascular system; abdomen; and musculoskeletal system. The psychologist shall be proficient in utilizing any equipment needed to conduct a physical examination.

(3) Complete a neurological examination demonstrating knowledge of the history related to the neurological system and the ability to assess the following: mental status, cranial nerves, motor system, sensory system, and reflexes. The psychologist shall differentiate normal laboratory values from abnormal laboratory values and correlate abnormal laboratory values with impaired physiological systems. The psychologist shall identify adverse drug reactions and identify laboratory data and physical signs indicating an adverse drug reaction.

e. Informed consent. At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the clinical experience. The psychologist shall provide sufficient information regarding the expectations and requirements of the clinical experience to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

f. Training documentation. The psychologist and the training director shall maintain documentation accounting for all clinical experience patient encounters, including the dates, times, and locations of all clinical experience patient encounters, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

g. Certification. The training physician(s) and the training director shall certify on forms provided by the board that the applicant has successfully completed the minimum number of clinical experience patient encounters required and demonstrated competence in clinical assessment techniques and pathophysiology through completion of the milestones defined in these rules.

244.3(3) Practicum. An applicant shall have completed a practicum in accordance with the requirements of this subrule. During the practicum, a psychologist shall develop competencies in evaluating and treating patients with mental disorders through pharmacological intervention via observation and active participation. The practicum must be associated with the psychopharmacology training program from which the applicant obtained the postdoctoral master of science degree in clinical psychopharmacology and must be completed in a period of time not less than six months and not more than three years.

a. Scope. At the beginning of the practicum, the psychologist shall directly observe the training physician evaluating and treating patients with mental disorders. After the training physician determines the psychologist has gained sufficient knowledge, the practicum shall transition to the psychologist's evaluation and treatment of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may evaluate and treat patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients, has

personal contact with the patient at each visit, and is reviewing all pertinent medical records. During the practicum, the training physician shall make all final treatment decisions, with consultation from the psychologist prior to making a final determination regarding the psychopharmacological treatment of a patient.

b. Minimum number of hours. A practicum shall consist of a minimum of 400 hours. Only hours spent face to face evaluating and treating patients with mental disorders and hours spent discussing treatment plans with a training physician may count as practicum hours. Time spent by the psychologist providing services that are within the scope of practice of a licensed psychologist, such as psychological examinations and psychotherapy, shall not be counted as practicum hours.

c. Minimum number of patients. A psychologist shall see a minimum of 100 individual patients throughout the practicum. A patient can be counted toward this requirement if the patient has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. Over the course of the practicum, the psychologist shall observe, evaluate, and treat patients encompassing a range of ages and a variety of psychiatric diagnoses.

d. Settings. At least 100 hours of the 400 hours must be completed in a psychiatric setting. At least 100 hours of the 400 hours must be completed in a primary care or community mental health setting.

e. Conflict of interest. A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

f. Milestones. To successfully complete the practicum, a psychologist shall demonstrate competency in each of the following:

(1) Physical examination and mental status examination. The psychologist shall perform comprehensive and focused physical examinations and mental status evaluations, demonstrate proper use of instruments, and recognize variation associated with developmental stages and diversity.

(2) Review of systems. The psychologist shall integrate information learned from patient reports, signs, symptoms, and a review of each major body system, recognizing normal developmental variations.

(3) Medical history interview. The psychologist shall systematically conduct a patient clinical interview, producing a patient's medical, surgical, psychiatric, and medication history, as well as a family medical and psychiatric history, and be able to communicate the findings in written and verbal form.

(4) Assessment indications and interpretation. The psychologist shall order and interpret appropriate tests (e.g., psychometric, laboratory, and radiological) for the purpose of making a differential diagnosis and monitoring therapeutic and adverse effects of treatment.

(5) Differential diagnosis. The psychologist shall determine primary and alternate diagnoses using established diagnostic criteria.

(6) Integrated treatment planning. The psychologist shall identify and select, using all available data, the most appropriate treatment alternatives, including medication, psychosocial, and combined treatments, and sequence treatment within the larger biopsychosocial context.

(7) Consultation and collaboration. The psychologist shall understand the parameters of the role of a prescribing psychologist and work with other professionals, including a patient's primary care physician, in an advisory or collaborative manner to effectively treat a patient.

(8) Treatment management. The psychologist shall apply, monitor, and modify as needed the treatment of a patient and learn to write valid and complete prescriptions.

(9) Medical documentation. The psychologist shall demonstrate appropriate medical documentation for the patient-psychologist interaction to include subjective and objective assessment; mental status, physical examination findings, or both; formulation; diagnostic impression; and comprehensive treatment plan.

g. Informed consent. At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the practicum. The psychologist shall provide sufficient information regarding the expectations and requirements of the practicum to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

h. Training documentation. The psychologist and the training director shall maintain documentation regarding all patients observed, evaluated, and treated by the psychologist as part of the practicum. The documentation shall clearly identify the training physician for each patient. The psychologist and the training director shall maintain documentation of all practicum hours, including the dates, times, and locations of all practicum hours, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

i. Certification. The training physician(s) and the training director shall certify on forms provided by the board that the psychologist has successfully completed the minimum number of practicum hours, treated the minimum number of patients, and demonstrated competence in the evaluation and treatment of patients with mental disorders through pharmacological intervention through completion of the milestones defined in these rules.

244.3(4) Examination. A psychologist shall pass the Psychopharmacology Examination for Psychologists (PEP) administered by the APA Practice Organization's College of Professional Psychology or by the Association of State and Provincial Psychology Boards. The passing score utilized by the board shall be the passing score recommended by the test administrator. The examination score shall be sent directly from the testing service to the board.

645—244.4(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule. A conditional prescribing psychologist shall complete a minimum of two years of supervised practice in prescribing psychotropic medications to patients with mental disorders in accordance with this rule to be eligible to apply for a prescription certificate.

244.4(1) Supervision plan. Prior to issuing a conditional prescription certificate, the board shall review and approve the proposed supervision plan.

a. The proposed supervision plan must include the following:

(1) Conditional prescribing psychologist information. The plan must include the name, license number, address, telephone number, and email address of the supervisee.

(2) Supervising physician information. The plan must include the name, license number, date of licensure, area of specialization, address, telephone number, and email address of each supervising physician.

(3) Primary supervising physician. The plan must include a designation of the primary supervising physician.

(4) Period of supervision. The plan must include the beginning date of the supervision plan and estimated date of completion.

(5) Locations and settings. The plan must include a description of the locations and settings where and with whom supervision will occur.

(6) Scope of practice. The plan must include a description of the scope of practice of the conditional prescribing psychologist, including any limitations on the types of psychotropic medications that may be prescribed and the patient populations to which a prescription may be issued and including the expectations and responsibilities of the supervising physician.

(7) Release of information. The plan must include a provision requiring the conditional prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the conditional prescribing psychologist to share the patient's health information with the supervising physician.

(8) Consultation between the conditional prescribing psychologist and the supervising physician. The plan must include a provision requiring that the conditional prescribing psychologist consult with the supervising physician on a regular basis regarding a patient's psychotropic treatment plan and any potential complications. A conditional prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician objects on the basis of a contraindication.

(9) Consultation between the supervising physician and the primary care physician. The plan must include a provision requiring that the supervising physician consult with the patient's primary

care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

(10) Termination of the supervision plan. The plan must include a description of how the supervision plan may be terminated and the process for notifying affected patients.

(11) Signatures. The plan must include signatures of the psychologist and all supervising physicians.

b. A conditional prescribing psychologist shall inform the board of any amendments to the conditional prescribing psychologist's supervision plan, including the addition of any supervising physicians, within 30 days of the change. Amendments to a supervision plan are subject to board approval.

c. The board shall transmit all approved supervision plans and approved amendments to the board of medicine.

244.4(2) *Responsibilities of a supervising physician.* A supervising physician shall provide supervision in accordance with rules established by the board of medicine.

244.4(3) *Responsibilities of a conditional prescribing psychologist.* At the initial contact, a conditional prescribing psychologist shall inform a patient, or a patient's legal guardian when appropriate, that the conditional prescribing psychologist is practicing under the supervision of a physician for purposes of prescribing psychotropic medication and shall provide the name of the supervising physician. A conditional prescribing psychologist shall provide sufficient information regarding the supervision requirements to obtain informed consent and appropriate releases. Upon request, a conditional prescribing psychologist shall provide additional information regarding the conditional prescribing psychologist's education, training, or experience with respect to prescribing psychotropic medications.

244.4(4) *Specialization.* A conditional prescribing psychologist shall complete the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

a. Children. To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A pediatric practice,
- (2) A child and adolescent practice, or
- (3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

b. Elderly patients. To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A geriatric practice, or
- (2) A general practice with patients across the lifespan including patients who are over 65 years of age.

c. Serious medical conditions. To prescribe to patients with serious medical conditions including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a conditional prescribing psychologist shall complete at least one year prescribing psychotropic medications to patients with serious medical conditions.

244.4(5) *Completion of supervised practice.* A conditional prescribing psychologist shall see a minimum of 300 patients over a minimum of two years to complete the supervised practice period, provided each of the 300 patients has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. A conditional prescribing psychologist shall treat a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

a. At the conclusion of the supervised practice period, a primary supervising physician shall certify the following:

- (1) Supervision was provided in accordance with rules established by the board of medicine.

(2) A conditional prescribing psychologist has successfully completed two years of supervised practice, considered at least 300 patients for psychopharmacological intervention, and treated at least 100 patients with psychotropic medications.

(3) A conditional prescribing psychologist intending to specialize in the psychological care of children or elderly persons, or persons with serious medical conditions, has completed the requirements of subrule 244.4(4).

(4) A conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones listed in paragraph 244.3(3) “f” sufficient to obtain a prescription certificate.

b. If a conditional prescribing psychologist is unable to successfully complete the supervised practice period prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time requested. Any requests for extension must be submitted to and approved by both the board and the board of medicine.

645—244.5(154B) Prescription certificate. A prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders in accordance with the requirements of this chapter.

244.5(1) Application. Unless a basis for denial exists in accordance with rule 645—244.9(154B), the board shall issue a prescription certificate to a conditional prescribing psychologist who satisfies the following requirements:

a. Holds an active license to practice psychology in Iowa, an active health service provider certification issued by the board, and an active conditional prescription certificate. The license, certification, and certificate must all be in good standing.

b. Submits documentation regarding successful completion of the supervised practice period.

c. Submits a collaborative practice agreement in accordance with rule 645—244.8(148,154B).

d. Possesses malpractice insurance that covers the prescribing of psychotropic medications.

e. Submits a completed application and a nonrefundable application fee of \$60.

244.5(2) Initial term and renewal. An initial prescription certificate shall be valid through the current expiration date of the applicant’s psychologist license. Thereafter, a prescription certificate shall be renewed biennially concurrent with the renewal of the psychologist license. A prescribing psychologist may renew a prescription certificate by submitting a completed renewal application and a nonrefundable application fee of \$60. A prescribing psychologist is responsible for renewing the prescription certificate prior to its expiration.

244.5(3) Continuing education required. A prescribing psychologist shall complete a minimum of 20 hours of continuing education in psychopharmacology each year. A total of 40 hours of continuing education in psychopharmacology is required to renew a prescription certificate. These hours are separate from, and in addition to, the continuing education hours needed to renew a psychologist license pursuant to 645—Chapter 241. If a psychologist specializes in treating children, a minimum of 10 hours of continuing education in psychopharmacology each year, for a total of 20 hours of continuing education per renewal period, must be directly related to prescribing psychotropic medication to children.

244.5(4) Late renewal. A prescription certificate shall become late when it has not been renewed prior to the expiration date. To renew a late prescription certificate, a prescribing psychologist shall complete the renewal requirements and submit a late fee of \$60 within 30 days following the prescription certificate expiration date. A prescribing psychologist who fails to renew a prescription certificate within 30 days following the prescription certificate expiration date shall have an inactive prescription certificate. A psychologist whose prescription certificate is inactive continues to hold the privilege of certification in Iowa but may not prescribe psychotropic medications until the prescription certificate is reactivated.

244.5(5) *Reactivation.* To apply for reactivation of an inactive prescription certificate, a psychologist shall submit a completed reactivation application, a nonrefundable fee of \$60, and documentation of a minimum of 40 hours of continuing education in psychopharmacology taken within the preceding two years. If a prescription certificate has been inactive for more than five years, a psychologist shall demonstrate competence in psychopharmacology through one of the following means:

- a. Practiced as a prescribing psychologist in another jurisdiction in the preceding two years.
- b. Completed a period of supervised practice for a minimum of 12 months. The board may issue a conditional prescription certificate to complete a supervised practice period for purposes of prescription certificate reactivation.

645—244.6(148,154B) Prescribing—joint rule. This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall comply with all prescription requirements described in 657—subrule 8.19(1). The following limits apply to a psychologist’s prescriptive authority:

1. A psychologist shall only prescribe psychotropic medications for the treatment of mental disorders.
2. A psychologist shall only prescribe psychotropic medications in situations where the psychologist has adequate education and training to safely prescribe.
3. A prescription shall identify the prescriber as a “psychologist certified to prescribe” and shall include the Iowa license number of the psychologist.
4. A prescription issued by a conditional prescribing psychologist shall contain the name of the supervising physician overseeing the care of the patient.
5. A psychologist shall not delegate prescriptive authority to any other person.
6. A psychologist is prohibited from prescribing narcotics as defined in Iowa Code section 124.101.
7. A psychologist shall maintain an active DEA registration and an active CSA registration in order to dispense, prescribe, or administer controlled substances.
8. A psychologist shall not self-prescribe nor prescribe to any person who is a member of the psychologist’s immediate family or household.
9. Before prescribing a psychotropic medication that is classified as a controlled substance, a psychologist shall check the patient’s prescriptive profile using the Iowa prescription monitoring program.
10. To prescribe to a patient who is pregnant or lactating, a psychologist shall consult with the patient’s obstetrician-gynecologist or the physician managing the patient’s pregnancy or postpartum care regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication to a patient if the patient’s obstetrician-gynecologist or the physician managing care objects on the basis of a contraindication.
11. To prescribe to a patient who has a serious medical condition, including but not limited to heart disease, kidney disease, liver disease, cancer, stroke, seizures, or comorbid psychological conditions, or to a patient who has a developmental or intellectual disability, a psychologist shall consult with the physician who is managing the comorbid condition for that patient regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication if the patient’s physician objects on the basis of a contraindication.
12. A psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician or collaborating primary care provider objects on the basis of a contraindication.

645—244.7(148,154B) Consultation with primary care providers—joint rule. This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall maintain a cooperative relationship with the primary care provider who oversees a patient’s general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate

for the patient's medical conditions, and significant changes in the patient's medical or psychological condition are discussed.

244.7(1) Requirement for a primary care provider. A patient must have a designated primary care provider in order for a psychologist to have the ability to prescribe psychotropic medications to the patient. If a patient does not have a designated primary care provider, a psychologist shall refer the patient to a primary care provider prior to prescribing psychotropic medications to the patient. A psychologist shall not prescribe psychotropic medications to a patient until the patient has established care with a primary care provider.

244.7(2) Requirement for a release. A psychologist shall obtain a release of information from the patient, or the patient's legal guardian when appropriate, authorizing the sharing of the patient's health information between the psychologist and the patient's primary care provider. A psychologist shall not prescribe psychotropic medications to a patient who refuses to sign a release.

244.7(3) Cooperation and consultation with primary care provider. A psychologist shall contact each patient's primary care provider on at least a quarterly basis and shall contact the primary care provider to relay information regarding the care of a patient whenever the following occur:

- a. A psychologist is considering adding a new psychotropic medication to a patient's medication regimen. A psychologist shall not prescribe a new psychotropic medication if the patient's primary care provider objects on the basis of a contraindication.
- b. A psychologist is discontinuing or changing the dosage of a psychotropic medication.
- c. A patient experiences adverse effects from any medication prescribed by the psychologist that may be related to the patient's medical condition.
- d. A psychologist receives the results of laboratory tests related to the medical care of a patient.
- e. A psychologist notes a change in a patient's mental condition that may affect the patient's medical treatment.

645—244.8(148,154B) Collaborative practice—joint rule.

244.8(1) A prescribing psychologist shall have one or more collaborating physicians at all times, as evidenced by a current collaborative practice agreement. Prior to executing a collaborative practice agreement, a prescribing psychologist and a collaborating physician shall review and discuss each other's relevant education, training, experience, and competencies to determine whether a collaborative practice is appropriate and to facilitate drafting a suitable collaborative practice agreement. A collaborative relationship between a prescribing psychologist and a collaborating physician shall ensure patient safety and optimal clinical outcomes. Collaboration may be done in person or via electronic communication in accordance with these rules. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time. A prescribing psychologist shall not prescribe without a current written collaborative practice agreement with a collaborating physician in place. All collaborative relationships shall be reviewed and evaluated on an annual basis to ensure that the prescribing psychologist is competent to safely prescribe psychotropic medications to patients and that the collaborating physician is providing appropriate feedback to the prescribing psychologist. A collaborative practice agreement shall establish the parameters of the collaborative practice that are mutually agreed upon by the prescribing psychologist and the collaborating physician and shall be reviewed on an annual basis.

244.8(2) A collaborative practice agreement shall include the following:

- a. *Prescribing psychologist information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.
- b. *Collaborating physician information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.
- c. *Time period.* The time period covered by the agreement.
- d. *Locations and settings.* The locations and settings where collaborative practice will occur.

e. Collaboration. A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborating physician is available for timely collaboration with a prescribing psychologist, either in person or via electronic communication, in accordance with these rules.

f. Scope of practice. The scope of practice agreed upon by the collaborating physician and the prescribing psychologist, as it relates to the prescribing psychologist's prescribing of psychotropic medications, including provisions to ensure that the prescribing psychologist's practice complies with all provisions of these rules.

g. Clinical protocols, practice guidelines, and care plans. Clinical protocols, practice guidelines, and care plans relevant to the scope of practice authorized.

h. Methods of communication. A description of how a prescribing psychologist and a collaborating physician may contact each other for consultation.

i. Limitations on psychotropic medications. A description of any limitations on the range of psychotropic medications the prescribing psychologist may prescribe. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only prescribes psychotropic medications that are consistent with the prescribing psychologist's education, training, experience, and competence.

j. Limitations on patient populations. A description of any limitations on the types of populations that the prescribing psychologist may treat with psychotropic medications. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only provides psychopharmacology services to patient populations that are within the prescribing psychologist's education, training, experience, and competence.

k. Release of information. A provision requiring the prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the prescribing psychologist to share the patient's health information with the collaborating physician.

l. Chart review. A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborative physician personally reviews and documents review of at least 10 percent of the prescribing psychologist's patient charts on a quarterly basis in each of the following categories:

- (1) Juvenile patients,
- (2) Pregnant or lactating patients,
- (3) Elderly patients,
- (4) Patients with serious medical conditions, and
- (5) All other patients.

m. Annual review. A provision requiring an annual review and evaluation of the collaborative relationship and the collaborative practice agreement.

n. Consultation between the prescribing psychologist and the collaborating physician. A provision requiring that the prescribing psychologist consult with the collaborating physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications. A prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the collaborating physician objects on the basis of a contraindication.

o. Consultation between the collaborating physician and the primary care provider. A provision requiring that the collaborating physician consult with the patient's primary care provider on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

p. Termination. A provision describing how the agreement can be terminated and the process for notifying affected patients if there will be an interruption in services.

q. Signatures. Signatures of the prescribing psychologist and all collaborating physicians.

645—244.9(154B) Grounds for discipline. The board may deny, suspend, revoke, or impose other discipline as outlined in 645—Chapter 13 against a psychologist who holds a conditional prescription certificate or prescription certificate for any of the following:

244.9(1) Violating any of the grounds for discipline set forth in rule 645—242.2(147,272C).

244.9(2) The inability to safely prescribe psychotropic medications.

244.9(3) Prescribing medications in violation of rule 645—244.6(148,154B).

244.9(4) Repeatedly failing to cooperate and collaborate with primary care physicians.

244.9(5) Prescribing psychotropic medications without a current written collaborative practice agreement.

244.9(6) Failing to maintain malpractice insurance that covers the prescribing of psychotropic medications.

244.9(7) Practicing outside the scope of a collaborative practice agreement.

244.9(8) Prescribing medications while the conditional prescription certificate or prescription certificate is inactive, or prescribing controlled substances while the DEA registration or CSA registration is not current.

244.9(9) Having a conditional prescription certificate or prescription certificate disciplined by the licensing authority of another state.

244.9(10) Having a license or health service provider certification disciplined by the board or the licensing authority of another state.

645—244.10(154B) List of psychologists. The board shall maintain a list of all current conditional prescribing psychologists and prescribing psychologists. The list shall be transmitted annually to the board of medicine.

244.10(1) Information. The list shall include the name of the psychologist, license number, license expiration date, expiration date of the conditional prescription certificate or prescription certificate, and practice locations.

244.10(2) Additions and deletions. When a psychologist is added or removed from the list, the board shall notify the board of medicine of the addition or deletion.

645—244.11(148,154B) Complaints—joint rule. Any complaint received by the board alleging a violation of this chapter shall be forwarded to the board of medicine. Any complaint received by the board of medicine alleging a violation of this chapter shall be forwarded to the board.

645—244.12(148,154B) Joint waiver—joint rule. Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

645—244.13(148,154B) Amendment—joint rule. Any rule identified as a joint rule may only be amended by agreement of the board and board of medicine through a joint rule-making process.

These rules are intended to implement Iowa Code chapters 148 and 154B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 261
“Licensure of Respiratory Care Practitioners, Polysomnographic Technologists, and Respiratory Care
and Polysomnography Practitioners”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 152B.6, 148G.5, 147.36, 147.76,
272C.3, and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 152B, 148G, 272C,
147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) + 1 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

These proposed rules set minimum standards for entry into the respiratory care and polysomnography professions. Iowa residents, licensees and employers benefit from the rules since the rules articulate the processes by which individuals apply for licensure in the state of Iowa, as directed in statute. The rules include the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the respiratory care and polysomnography professions has minimum competency. Requirements include the application process, minimum educational qualifications and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the respiratory care and polysomnography professions are at the expense of the licensee.

To become an Iowa licensed respiratory care practitioner, there is an examination fee of \$190 or \$200 (depending on the examination), an application fee of \$75, and a fingerprinting/background check fee of \$55 (application fees are addressed in 645—Chapter 5). Licenses are valid for a two-year period, and the renewal fee is \$90. These costs are comparable to surrounding states. The examination fee is the same in

Nebraska and Minnesota. Nebraska's application fee is \$118, and the renewal fee is \$118; Minnesota's application fee is \$190, and the renewal fee is \$90. Iowa's initial licensure application process is similar to those implemented by other state boards of respiratory care. Licensure is required for respiratory care therapists in every state except Alaska.

To become an Iowa licensed polysomnography technologist, there is an application fee of \$75, and a fingerprinting/background check fee of \$55 (application fees are addressed in 645—Chapter 5). Licenses are valid for a two-year period, and the renewal fee is \$90. In comparison, North Dakota's application fee is \$80; its fingerprinting/background check fee is \$41.25.

To become dually licensed as a respiratory care therapist and polysomnography technologist, there is an application fee of \$90 and a fingerprinting/background check fee of \$55 (application fees are addressed in 645—Chapter 5). Licenses are valid for a two-year period, and the renewal fee is \$90.

The licensee would also have costs related to educational requirements: a certificate, or associate, undergraduate, or graduate degree. The Board of Respiratory Care and Polysomnography (Board) has not identified an exact cost of education for this field since it varies depending on the school the licensee chooses to attend to meet those requirements.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.20 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and respiratory care and polysomnography professionals benefit from the proposed rules. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide the academic training for these professionals to obtain their license in the State of Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. Because the cost of education is so variable depending on the institution the person attends, the Board is unable to put an exact cost on the cost of education or examination preparation.

Application fees for licensure are \$75 or \$90 for an initial license, plus a \$55 fingerprinting/background check fee. Fees for each two-year renewal period are \$75 for a respiratory care practitioner; \$75 for a polysomnographic technologist; and \$90 for a respiratory care and polysomnography practitioner license.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.20 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals and reinstatements. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate

File 557. It takes roughly 0.20 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact from this rule to state revenues. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes the cost to license these professions is justified by the benefits achieved because licensure ensures that Iowans are treated by competent and qualified practitioners. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of respiratory care practitioners and polysomnographic technologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of respiratory care practitioners and polysomnographic technologists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of respiratory care practitioners and polysomnographic technologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment this Board is now part of DIAL. DIAL—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These proposed rules support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the licensure of respiratory care practitioners and polysomnographic technologists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of respiratory care practitioners and polysomnographic technologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of respiratory care practitioners and polysomnographic technologists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of respiratory care practitioners and polysomnographic technologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment this Board is now part of DIAL. DIAL—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These proposed rules support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

These proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rules are meant to ensure public safety in terms of licensing requirements for these professions. These licensees may work for small businesses, as well as large corporations and hospitals. To exempt a small business from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 261 and adopt the following **new** chapter in lieu thereof:

RESPIRATORY CARE PRACTITIONERS

| | |
|-------------|---|
| CHAPTER 261 | LICENSURE OF RESPIRATORY CARE PRACTITIONERS, POLYSOMNOGRAPHIC TECHNOLOGISTS, AND RESPIRATORY CARE AND POLYSOMNOGRAPHY PRACTITIONERS |
| CHAPTER 262 | CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS |
| CHAPTER 263 | DISCIPLINE FOR RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS |
| CHAPTER 264 | RESERVED |
| CHAPTER 265 | PRACTICE OF RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS |

CHAPTER 261

LICENSURE OF RESPIRATORY CARE PRACTITIONERS, POLYSOMNOGRAPHIC TECHNOLOGISTS, AND RESPIRATORY CARE AND POLYSOMNOGRAPHY PRACTITIONERS

645—261.1(148G,152B) Definitions.

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of respiratory care and polysomnography.

“*BRPT*” means the Board of Registered Polysomnographic Technologists.

“*CAAHEP*” means the Commission on Accreditation of Allied Health Education Programs.

“*CoARC*” means the Commission on Accreditation for Respiratory Care.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Licensee*” means any person licensed to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner in the state of Iowa.

“*License expiration date*” means March 31 of even-numbered years.

“*NBRC*” means the National Board for Respiratory Care.

“*Polysomnographic technologist*” means a person licensed by the board to engage in the practice of polysomnography under the general supervision of a physician or a qualified health care professional prescriber.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—261.14(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of respiratory care and polysomnography to license persons who 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.

645—261.2(148G,152B) General requirements for licensure. The following general criteria apply to licensure:

261.2(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.17(147,152B). Submit two completed sets of fingerprint cards to facilitate a national criminal history background check. The cost for the evaluation of the fingerprint cards and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) criminal history background checks is assessed to the applicant. The board may withhold issuing a license pending receipt of a report from the DCI and FBI.

a. Submit a release authorizing the background check.

b. Licensees who were issued their licenses within six months prior to the renewal do not need to renew their licenses until the renewal month two years later.

c. An applicant who has been a licensed respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner under the laws of another jurisdiction shall provide verification of license(s) from every jurisdiction in which the applicant has been licensed. Verification shall be 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:

- (1) Licensee’s name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) All disciplinary action taken against the license.

261.2(2) Incomplete applications that have been on file in the board office for more than two years will be considered invalid and destroyed.

645—261.3(152B) Additional requirements for respiratory care practitioner licensure. The following are additional specific criteria for licensure as a respiratory care practitioner:

261.3(1) Successful completion of a respiratory care education program accredited by, or under a letter of review from, CoARC or CAAHEP.

261.3(2) Foreign-trained respiratory care practitioners shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundations, Inc.; Credentials Evaluation Service; or International Credentialing Associates, Inc. The professional curriculum must be equivalent to that stated in these rules. The candidate bears the expense of the curriculum evaluation.

b. Provide a copy of the certificate or diploma awarded to the applicant from a respiratory care program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

261.3(3) The examination required by the board shall be the Therapist Multiple-Choice Examination or the Certified Respiratory Therapist Examination administered by the NBRC. A score on the examination that meets or exceeds the minimum passing score established by the NBRC is required.

261.3(4) Results of the examination must be received by the board of respiratory care and polysomnography by one of the following methods:

a. Scores are sent directly from the examination service to the board;

b. A copy of a certificate showing proof of the successful achievement of the certified respiratory therapist (CRT) or registered respiratory therapist (RRT) credential awarded by the NBRC is submitted to the board; or

c. A copy of the score report or an electronic web-based confirmation by the NBRC showing proof of successful completion is submitted to the board.

645—261.4(148G,152B) Additional requirements for polysomnographic technologist licensure. The following are additional specific criteria for licensure as a polysomnographic technologist:

261.4(1) Graduation from a polysomnographic educational program accredited by CAAHEP. A transcript shall be submitted to the board office directly from the college or university; or

261.4(2) Graduation from an entry into respiratory care professional practice program accredited by CoARC or CAAHEP for which a transcript will be submitted to the board office directly from the college or university; and direct-source verification of one of the following:

a. Completion of a sleep specialist program option accredited by CoARC or CAAHEP, or

b. Obtaining the sleep disorder specialist credential from the NBRC, or

c. Obtaining the registered polysomnographic technologist credential from the BRPT; or

261.4(3) Graduation from an electroneurodiagnostic technologist program with a polysomnographic technology track that is accredited by CAAHEP with the transcript sent directly to the board from the college or university; or

261.4(4) Requirements for current Iowa licensees holding a license in a profession other than polysomnography. An individual who holds an active license under Iowa Code section 147.2 in a profession other than polysomnography and whose license is in good standing with the board for that profession may receive licensure upon verification from the medical director of the individual's current employer or the medical director's designee that the individual has completed on-the-job training in the field of polysomnography and is competent to perform polysomnography.

261.4(5) Foreign-trained polysomnographic technologists shall:

a. Provide an equivalency evaluation of their educational credentials by either International Educational Research Foundations, Inc., Credentials Evaluation Service, or International Credentialing Associates, Inc. The candidate will bear the expense of the curriculum evaluation.

b. Provide a copy of the certificate or diploma awarded to the applicant from a respiratory care program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

261.4(6) Licensure by proof of work experience. An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

261.4(7) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—261.5(148G,152B) Requirements for dual licensure. The following are additional specific criteria for licensure as a respiratory care and polysomnography practitioner. An applicant for licensure

as a respiratory care and polysomnography practitioner shall meet the requirements of subrules 261.5(1) and 261.5(2).

261.5(1) The applicant shall have successfully completed a respiratory care education program accredited by, or under a letter of review from, CoARC or CAAHEP.

a. Foreign-trained practitioners shall:

(1) Provide an equivalency evaluation of their educational credentials by International Educational Research Foundations, Inc., Credentials Evaluation Service, or International Credentialing Associates, Inc. The professional curriculum must be equivalent to that stated in these rules. The candidate will bear the expense of the curriculum evaluation.

(2) Provide a copy of the certificate or diploma awarded to the applicant from the program in the country in which the applicant was educated.

(3) Receive a final determination from the board regarding the application for licensure.

b. Examination requirements. The examinations required by the board shall be the Therapist Multiple-Choice Examination administered by the NBRC and either the Sleep Disorders Specialist Examination (SDS) administered by the NBRC or the Registered Polysomnographic Technologist Examination administered by the BRPT. The minimum passing score established by the NBRC or BRPT is required.

c. Results of the examination. Results of the examination must be received by the board of respiratory care and polysomnography by one of the following methods:

(1) Scores are sent directly from the examination service to the board;

(2) A copy of a certificate showing proof of the successful achievement of the certified respiratory therapist (CRT) or registered respiratory therapist (RRT) credential awarded by the NBRC submitted to the board; or

(3) A copy of the score report or an electronic web-based confirmation by the NBRC showing proof of successful completion of the Therapist Multiple-Choice Examination, State Clinical Examination, or Certified Respiratory Therapist Examination administered by the NBRC submitted to the board.

261.5(2) The applicant must also meet one of the following requirements:

a. Graduation from a polysomnographic educational program accredited by CAAHEP, with the transcript sent directly from the college or university to the board; or

b. Completion of a sleep specialist program option accredited by CoARC or CAAHEP with the transcript submitted to the board office directly from the college or university; and direct-source verification of one of the following:

(1) Completion of the curriculum for a polysomnographic certificate established and accredited by the CAAHEP as an extension of the respiratory care program, or

(2) Obtaining the sleep disorder specialist credential from the NBRC, or

(3) Obtaining the registered polysomnographic technologist credential from the BRPT; or

c. Graduation from an electroneurodiagnostic technologist program with a polysomnographic technology track that is accredited by CAAHEP, with the transcript submitted to the board office directly from the college or university; or

d. Hold an active license under Iowa Code section 147.2 in a profession other than polysomnography that is in good standing with the board for that profession and provide verification from the medical director of the applicant's current employer or the medical director's designee that the applicant has completed on-the-job training in the field of polysomnography and is competent to perform polysomnography; or

645—261.6(148G,152B) License renewal.

261.6(1) The biennial license renewal period for a license will begin on April 1 of an even-numbered year and end on March 31 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

261.6(2) An individual who was issued an initial license within six months of the license renewal date does not need to renew the license until the subsequent renewal two years later.

261.6(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—262.2(148G,152B,272C) and the mandatory reporting requirements of subrule 261.8(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.

261.6(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 and dependent adults in Iowa will complete the applicable department of health and human services' training relating to the identification and reporting of child and dependent adult abuse as required by Iowa Code section 232.69(3) "b."

b. The requirement for mandatory training for identifying and reporting child and dependent adult abuse will 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 262.

c. The board may select licensees for audit of compliance with the requirements in paragraphs "a" and "b."

261.6(5) Upon receiving the information and the fee, a two-year license will be administratively issued. In the event the board receives adverse information on the renewal application, the renewal license will be issued but the board may refer the adverse information for further consideration or disciplinary investigation.

261.6(6) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

261.6(7) Late renewal. A license not renewed by the expiration date will be assessed a late fee as specified in rule 645—5.17(147,152B). Completion of renewal requirements and submission of the late fee within the grace period are needed to renew the license.

261.6(8) Inactive license. A license not renewed by the end of the grace period is inactive. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice respiratory care in Iowa until the license is reactivated. A licensee who practices respiratory care in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—261.7(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

261.7(1) Submit a reactivation application and pay the reactivation fee specified in rule 645—5.17(147,152B).

261.7(2) If the license has been inactive for two or more years, the licensee shall submit two completed fingerprint cards to facilitate a national criminal history background check. The cost for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant. The board may withhold issuing a license pending receipt of a report from the DCI and FBI.

261.7(3) Provide verification of current competence to practice by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly

from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of continuing education that conforms to standards defined in rule 645—262.3(148G,152B,272C) within 24 months immediately preceding submission of the application for reactivation.

1. For respiratory care practitioners: 24 hours of continuing education.
2. For polysomnographic technologists: 24 hours of continuing education.
3. For respiratory care and polysomnography practitioners: 24 hours of continuing education of which at least 8 hours but no more than 12 hours shall be on sleep-related topics.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of continuing education that conforms to standards defined in rule 645—262.3(148G,152B,272C) within 24 months immediately preceding submission of the application for reactivation.

1. For respiratory care practitioners: 48 hours of continuing education.
2. For polysomnographic technologists: 48 hours of continuing education.
3. For respiratory care and polysomnography practitioners: 48 hours of continuing education of which at least 16 hours but no more than 24 hours shall be on sleep-related topics.

645—261.8(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 rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—261.14(17A,147,272C) prior to practicing in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148G, 152B, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 262
“Continuing Education for Respiratory Care Practitioners and Polysomnographic Technologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 152B.6, 152B.11, 148G.5, 147.36, 147.76, 272C.3, and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 152B, 148G, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) + 1 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for respiratory care therapists and polysomnographic technologists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that respiratory care therapists and polysomnographic technologists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no direct costs to the public. There is a direct cost to a licensee who must pay for the continuing education required. Private industry offers these courses, so the Board of Respiratory Care and Polysomnography (Board) is not privy to exact costs, but research estimates the costs to be around \$150 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

Costs to the Department include the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope

of work of this Board at approximately 0.20 full-time equivalent (FTE) position, which includes questions from the public and licensees, such as practice standards, continuing education, and Board meeting administration. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that respiratory care therapists and polysomnographic technologists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offers these courses, so the Board is not privy to exact costs, but research estimates the costs to be around \$150 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

Currently, Iowa requires 24 hours of continuing education for these license types every two years.

Costs to the Department are the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.20 FTE position, which includes questions from the public and licensees, such as practice standards, continuing education, and Board meeting administration. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards of care, which potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.20 FTE position, which includes questions from the public and licensees, such as practice standards, continuing education, and Board meeting administration.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact from these proposed rules on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. Representatives of the Board reviewed the required hours and did not support reducing them.

The Board believes that the benefits achieved justify the costs. The purpose of continuing education is to ensure ongoing competency for providers. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so the Board is unable to submit evidence of this belief.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives include reducing or eliminating continuing education requirements for respiratory care therapists and polysomnography technologists. Iowa requires 24 hours of continuing education every two years for respiratory care therapists, which is fairly consistent with a review of surrounding states. Minnesota, Missouri, and Illinois also require 24 hours every two years, and Kansas requires 12 every year. Nebraska and South Dakota each require 20 hours every two years.

Representatives of the Board reviewed the required hours and did not support reducing them.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Less restrictive alternatives include reducing or eliminating continuing education requirements for respiratory care therapists and polysomnography technologists. Representatives of the Board reviewed the required hours and did not support reducing them.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Representatives of the Board reviewed the required hours and did not support reducing them. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so the Board is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

These proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rules are meant to ensure public safety in terms of licensing requirements for these professions. These licensees may work for small businesses, as well as large corporations and hospitals. To exempt a small business from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 262 and adopt the following new chapter in lieu thereof:

CHAPTER 262
CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS AND
POLYSOMNOGRAPHIC TECHNOLOGISTS

645—262.1(148G,152B,272C) Definitions.

“*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.

“*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 respiratory care and polysomnography.

“*Continuing education*” means planned, organized learning acts 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.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner in the state of Iowa.

645—262.2(148G,152B,272C) Continuing education requirements.

262.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on April 1 of each even-numbered year and ending on March 31 of the next even-numbered year. Each biennium, the licensee will be required to complete continuing education that meets the requirements specified in rule 645—262.3(148G,152B,272C).

a. For respiratory care practitioner licensees: complete a minimum of 24 hours of continuing education, with 12 of the 24 hours earned by completing a program in which the instructor conducts the class in person or by employing an electronic technology that allows for real-time communication between the instructor and licensee.

b. For respiratory care and polysomnography practitioner licensees: complete a minimum of 24 hours of continuing education, with 12 of the 24 hours of continuing education earned by completing a program in which the instructor conducts the class in person or by employing an electronic technology that allows for real-time communication between the instructor and licensee. At least 8 hours but not more than 12 hours shall be on sleep-related topics.

c. For polysomnographic technologist licensees: complete a minimum of 24 hours of continuing education, with 12 of the 24 hours of continuing education earned by completing a program in which the instructor conducts the class in person or by employing an electronic technology that allows for real-time communication between the instructor and licensee.

262.2(2) Requirements of new licensees. Those persons licensed for the first time will 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. For each subsequent license renewal, the new licensee will be required to complete continuing education per biennium.

262.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

262.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

262.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—262.3(148G,152B,272C) Standards.

262.3(1) General criteria. A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance including:
 - (1) Date(s), location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

262.3(2) Specific criteria. Continuing education hours of credit may be obtained by:

- a. Programs/activities of a clinical nature related to the practice of respiratory care or polysomnography.
- b. Program presenters who will receive one hour of credit for each hour of presentation for the first offering of the continuing education program/activity.
- c. Academic coursework that meets the criteria set forth in the rules and is accompanied by an official transcript indicating successful completion of the course. Continuing education credit equivalents are as follows:
 - 1 academic semester hour = 15 continuing education hours
 - 1 academic quarter hour = 10 continuing education hours
- d. The following are approved for continuing education credit on a one-time basis per biennium and require a certificate of attendance or verification:

CERTIFICATIONS :

| | |
|--|----------|
| Advanced Cardiac Life Support | 12 hours |
| Basic Cardiac Life Support—Instructor | 8 hours |
| Basic Cardiac Life Support | 6 hours |
| Neonatal Resuscitation | 9 hours |
| Pediatric Advanced Life Support | 14 hours |
| Mandatory Reporting | 4 hours |
| Certified Pulmonary Function Technologist | 8 hours |
| Registered Pulmonary Function Technologist | 12 hours |

These rules are intended to implement Iowa Code section 272C.2 and chapters 148G and 152B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 265
“Practice of Respiratory Care Practitioners and Polysomnographic Technologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 152B.6, 148G.5, 147.36, 147.76, 272C.3, and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 152B, 148G, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: (US) + 1 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

These proposed rules provide Iowans, licensees, and their employers with definitions relevant to the practice of respiratory care and polysomnography, including the code of ethics, guidance on intravenous administration and the setup and delivery of respiratory care equipment, the role of students, requirements for the location of the practice of polysomnography, and services provided by each profession. These rules articulate practice standards and provide a scope of practice for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are costs associated with practice standards since there is often time, effort and money associated with compliance. There are costs for the professionals associated with the time required to review the code of ethics and practice standards. There are costs associated with supervising students and securing accredited sleep medicine laboratories or centers for the practice of polysomnography, as well as costs to the public associated with receiving these services, such as copayment. Requirements for the setup and delivery of respiratory care equipment may also include copayment, as well as staff time and record keeping. The Board of Respiratory Care and Polysomnography (Board) does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

Costs to the Department include the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, questions from licensees and the public,

and administration of Board meetings. An executive officer supports the work of this Board at approximately 0.20 full-time equivalent (FTE) position. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from these proposed rules. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are few practitioners in these professions. There are approximately 1,845 respiratory care therapists, 150 polysomnographic technologists, and 86 dual licensed individuals who provide these services to Iowans. In 2022, a total of seven complaints was submitted to the Board, and public discipline was issued for one respiratory care therapist. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing these important services to Iowans. If these professions were not regulated, it could mean that lower-skilled individuals would provide these services to Iowans, which would be of concern to the Board. Respiratory care is regulated in every U.S. state, with the exception of Alaska. Approximately 37 states have regulatory or statutory requirements for polysomnography.

The Board does not have a mechanism for estimating what the total costs might be to the public and to the licensee.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include the staff time needed to manage the full scope of board activities, which includes oversight of practice standards, questions from licensees and the public, and administration of Board meetings. An executive officer supports the work of this Board at approximately 0.20 position. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on this rule to state revenues.

Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are few practitioners in these professions. There are approximately 1,845 respiratory care therapists, 150 polysomnographic technologists, and 86 dual licensed individuals who provide these services to Iowans. In 2022, a total of seven complaints were submitted to the Board, and public discipline was issued for one respiratory care therapist. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing these important services

to Iowans. If these professions were not regulated, it could mean that lower-skilled individuals would provide these services to Iowans, which would be of concern to the Board. Respiratory care is regulated in every U.S. state, with the exception of Alaska. Approximately 37 states have regulatory or statutory requirements for polysomnography.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Licensing is the highest form of regulation. Lower forms of regulation could be viable, such as a registration. That said, respiratory care is regulated in every U.S. state except Alaska, and approximately 37 states have regulatory or statutory requirements for polysomnography.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Currently, respiratory care is regulated in every U.S. state except Alaska, and approximately 37 states have regulatory or statutory requirements for polysomnography.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as registration as opposed to licensure. The Board ultimately decided that to ensure public safety and the integrity of the profession, licensure requirements should stay in effect. Currently, respiratory care is regulated in every U.S. state except Alaska, and approximately 37 states have regulatory or statutory requirements for polysomnography. Not regulating this profession could jeopardize public safety and lead to serious injury for consumers. The Board believes regulations are necessary and critical to ensuring public safety, which is the paramount concern.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rules are meant to ensure public safety in terms of licensing requirements for these professions. These licensees may work for small businesses, as well as large corporations and hospitals. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 265 and adopt the following **new** chapter in lieu thereof:

CHAPTER 265
PRACTICE OF RESPIRATORY CARE PRACTITIONERS AND
POLYSOMNOGRAPHIC TECHNOLOGISTS

645—265.1(148G,152B,272C) Definitions.

“*Board*” means the board of respiratory care and polysomnography.

“*Direct supervision*” means that the respiratory care and polysomnography practitioner or the polysomnographic technologist providing supervision must be present where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

“*General supervision*” means that the polysomnographic procedure is provided under a physician’s or qualified health care professional prescriber’s overall direction and control, but the physician’s or qualified health care professional prescriber’s presence is not required during the performance of the procedure.

“*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery and who is board certified and who is actively involved in the sleep medicine center or laboratory.

“*Polysomnographic student*” means a person who is enrolled in a program approved by the board and who may provide sleep-related services under the direct supervision of a respiratory care and polysomnography practitioner or a polysomnographic technologist as part of the person’s education program.

“*Polysomnographic technician*” means a person who has graduated from a program approved by the board, but has not yet received an accepted national credential awarded from an examination program approved by the board and who may provide sleep-related services under the direct supervision of a licensed respiratory care and polysomnography practitioner or a licensed polysomnographic technologist for a period of up to 30 days following graduation while awaiting credentialing examination scheduling and results.

645—265.2(148G,152B,272C) Code of ethics.

265.2(1) The respiratory care practitioner or polysomnographic technologist will practice acceptable methods of treatment and will not practice beyond the competence or exceed the authority vested in the practitioner or technologist by physicians.

265.2(2) The respiratory care practitioner or polysomnographic technologist will continually strive to increase and improve knowledge and skill and will render to each patient the full measure of the practitioner’s or technologist’s ability. All services will be provided with respect for the dignity of the patient, regardless of the patient’s social or economic status or personal attributes or the nature of the patient’s health problems.

265.2(3) The respiratory care practitioner or polysomnographic technologist will be responsible for the competent and efficient performance of assigned duties and will expose incompetent, illegal or unethical conduct of members of the profession.

265.2(4) The respiratory care practitioner or polysomnographic technologist will hold in confidence all privileged information concerning the patient and refer all inquiries regarding the patient to the patient’s physician.

265.2(5) The respiratory care practitioner or polysomnographic technologist will not accept gratuities and shall guard against conflict of interest.

265.2(6) The respiratory care practitioner or polysomnographic technologist will uphold the dignity and honor of the profession and abide by its ethical principles.

265.2(7) The respiratory care practitioner or polysomnographic technologist will have knowledge of existing state and federal laws governing the practice of respiratory therapy or polysomnography and will comply with those laws.

265.2(8) The respiratory care practitioner or polysomnographic technologist will cooperate with other health care professionals and participate in activities to promote community, state, and national efforts to meet the health needs of the public.

645—265.3(152B,272C) Intravenous administration. Starting an intravenous line or administering intravenous medications is outside the scope of practice of a licensed respiratory care practitioner. However, this rule does not preclude a licensed respiratory care practitioner from performing intravenous administration under the auspices of the employing agency if formal training is acquired and documented.

645—265.4(152B,272C) Setup and delivery of respiratory care equipment.

265.4(1) Unlicensed personnel may deliver, set up, and test the operation of respiratory care equipment for a patient but may not perform any type of patient care. Instruction or demonstration of the equipment will be limited to its mechanical operation (on and off switches, emergency button, cleaning, maintenance). Any instruction or demonstration to the patient regarding the clinical use of the equipment, the fitting of any device to the patient or making any adjustment, or any patient monitoring, patient assessment, or other procedures designed to evaluate the effectiveness of the treatment must be performed by a licensed respiratory therapist or other licensed health care provider allowed by Iowa law.

265.4(2) Respiratory care equipment includes but is not limited to:

- a. Positive airway pressure (continuous positive airway pressure and bi-level positive airway pressure) devices and supplies;
- b. Airway clearance devices;
- c. Invasive and noninvasive mechanical ventilation devices and supplies;
- d. Nasotracheal and tracheal suctioning devices and supplies;
- e. Apnea monitors and alarms and supplies;
- f. Tracheostomy care devices and supplies;
- g. Respiratory diagnostic testing devices and supplies, including but not limited to pulse oximetry, CO₂ monitoring, and spirometry devices and supplies; and
- h. Pulse-dose or demand-type oxygen conserving devices or any oxygen delivery systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen.

645—265.5(152B,272C) Respiratory care as a practice. “Respiratory care as a practice” means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities that affect the pulmonary system and associated aspects of cardiopulmonary and other systems’ functions, and includes, but is not limited, to the following direct and indirect respiratory care services that are safe, of comfort, aseptic, preventative, and restorative to the patient:

1. Observing and monitoring signs and symptoms, general behavior, reactions, and general physical responses to respiratory care treatment and diagnostic testing.
2. Determining whether the signs, symptoms, behavior, reactions, or general responses exhibit abnormal characteristics.
3. Performing pulmonary diagnostic testing.
4. Analyzing blood gases and respiratory secretions.
5. Measuring and monitoring hemodynamic and physiologic function related to cardiopulmonary pathophysiology.
6. Performing diagnostic and testing techniques in the medical management of patients to assist in diagnosis, monitoring, treatment, and research of pulmonary abnormalities, including measurement of ventilatory volumes, pressures, and flows; and collection of specimens of blood and from the respiratory tract.
7. Administering:
 - Medical gases, aerosols, and humidification, not including general anesthesia.

- Lung expansion therapies.
 - Bronchopulmonary hygiene therapies.
 - Hyperbaric therapy.
 - Pharmacologic and therapeutic agents necessary to implement therapeutic, disease prevention, pulmonary rehabilitative, or diagnostic regimens prescribed by a licensed physician, surgeon, or other qualified health care professional prescriber.
8. Maintaining natural and artificial airways.
 9. Without cutting tissues, inserting and maintaining artificial airways.
 10. Initiating, monitoring, modifying and discontinuing invasive or noninvasive mechanical ventilation.
 11. Performing basic and advanced cardiopulmonary resuscitation.
 12. Performing invasive procedures that relate to respiratory care.
 13. Implementing changes in treatment regimen based on observed abnormalities and respiratory care protocols to include appropriate reporting and referral.
 14. Managing asthma, COPD, and other respiratory diseases.
 15. Performing cardiopulmonary rehabilitation.
 16. Instructing patients in respiratory care, functional training in self-care and home respiratory care management and promoting the maintenance of respiratory care fitness, health, and quality of life.
 17. Performing those advanced practice procedures that are permitted within the policies of the employing institution and for which the respiratory care practitioner has documented training and demonstrated competence.
 18. Managing the clinical delivery of respiratory care services through the ongoing supervision, teaching, and evaluation of respiratory care.
 19. Transcribing and implementing a written, verbal, or telephonic order from a licensed physician, surgeon, or other qualified health care professional prescriber pertaining to the practice of respiratory care.

645—265.6(148G,272C) Practice of polysomnography.

265.6(1) The practice of polysomnography consists of but is not limited to the following tasks as performed for the purpose of polysomnography, under the general supervision of a licensed physician or qualified health care professional prescriber:

- a. Monitoring, recording, and evaluating physiologic data during polysomnographic testing and review during the evaluation of sleep-related disorders, including sleep-related respiratory disturbances, by applying any of the following techniques, equipment, or procedures:
 - (1) Noninvasive continuous, bilevel positive airway pressure, or adaptive servo-ventilation titration on spontaneously breathing patients using a mask or oral appliance; provided, however, that the mask or oral appliance does not extend into the trachea or attach to an artificial airway.
 - (2) Supplemental low-flow oxygen therapy of less than six liters per minute, utilizing a nasal cannula or incorporated into a positive airway pressure device during a polysomnogram.
 - (3) Capnography during a polysomnogram.
 - (4) Cardiopulmonary resuscitation.
 - (5) Pulse oximetry.
 - (6) Gastroesophageal pH monitoring.
 - (7) Esophageal pressure monitoring.
 - (8) Sleep stage recording using surface electroencephalography, surface electrooculography, and surface submental electromyography.
 - (9) Surface electromyography.
 - (10) Electrocardiography.
 - (11) Respiratory effort monitoring, including thoracic and abdominal movement.
 - (12) Plethysmography blood flow monitoring.
 - (13) Snore monitoring.
 - (14) Audio and video monitoring.

- (15) Body movement monitoring.
- (16) Nocturnal penile tumescence monitoring.
- (17) Nasal and oral airflow monitoring.
- (18) Body temperature monitoring.

b. Monitoring the effects that a mask or oral appliance used to treat sleep disorders has on sleep patterns; provided, however, that the mask or oral appliance does not extend into the trachea or attach to an artificial airway.

c. Observing and monitoring physical signs and symptoms, general behavior, and general physical response to polysomnographic evaluation and determining whether initiation, modification, or discontinuation of a treatment regimen is warranted.

d. Analyzing and scoring data collected during the monitoring described in this subrule for the purpose of assisting a physician in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease, or actual or anticipated somatic dysfunction.

e. Implementation of a written or verbal order from a physician or qualified health care professional prescriber to perform polysomnography.

f. Education of a patient regarding the treatment regimen that assists the patient in improving the patient's sleep.

g. Use of any oral appliance used to treat sleep-disordered breathing while under the care of a licensed polysomnographic technologist during the performance of a sleep study, as directed by a licensed dentist.

265.6(2) Before providing any sleep-related services, a polysomnographic technician or polysomnographic student who is obtaining clinical experience will give notice to the board that the person is working under the direct supervision of a respiratory care and polysomnography practitioner or a polysomnographic technologist in order to gain the experience to be eligible to sit for a national certification examination. A badge that appropriately identifies the person is to be worn while providing such services.

645—265.7(148G,152B,272C) Students.

265.7(1) A student who is enrolled in an approved respiratory care, sleep add-on, polysomnography training program, or electroneurodiagnostic program and is employed in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 and chapter 148G under the direct and immediate supervision of a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner for the duration of the program, but not to exceed the duration of the program.

265.7(2) Direct and immediate supervision of a respiratory care or polysomnographic student means that the licensed respiratory care practitioner or polysomnographic technologist will:

- a.* Be continuously on site and present in the department or facility where the student is performing care;
- b.* Be immediately available to assist the person being supervised in the care being performed; and
- c.* Be responsible for care provided by students.

645—265.8(148G,272C) Location of polysomnography services. The practice of polysomnography is to take place only in a facility that is accredited by a nationally recognized sleep medicine laboratory or center accrediting agency, in a facility operated by a hospital or a hospital licensed under Iowa Code chapter 135B, or in a patient's home pursuant to rules adopted by the board; provided, however, that the scoring of data and the education of patients may take place in another setting.

These rules are intended to implement Iowa Code chapters 147, 148G, 152B, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 300
“Licensure of Speech Pathologists and Audiologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154F, 272C.3, 272C.4, and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154F, 147, 272C, and
17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:10 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules set minimum standards for entry into the speech pathology and audiology profession. Iowa residents, licensees and employers benefit from the rules because the rules articulate the processes by which individuals apply for licensure as speech pathologists or audiologists in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant because complying with the minimum requirements to enter into the speech pathologist or audiologist profession is at the expense of the licensee.

Speech pathologists and audiologists are required to earn a masters or doctoral degree in speech pathology or audiology. Applicants must also pay applicable fees and pass an examination in order to obtain a license. The fee for the Praxis Examination is \$146.

The application fee is \$120, and the renewal fee is \$96.

These costs are comparable to or less than surrounding states. In Nebraska, applicants must pay \$146 for the Praxis Examination and an application fee of \$140. In Minnesota, applicants must pay \$600 for

the examination. The application fee is \$160.50 for an 18-month license in speech pathology and \$396 for an 18-month license in audiology.

The Board of Speech Pathology and Audiology (Board) staff review applications for initial and renewal licenses and for licensure reinstatement. Board staff also answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.31 (full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rules. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the cost to license this profession is justified by the benefits achieved because it ensures that Iowans are treated with competent and qualified practitioners.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The cost for the examination required is \$146. Licensing fees are \$120 for an initial license and \$96 for each renewal period.

- Qualitative description of impact:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the cost to license this profession is justified by the benefits achieved because it ensures that Iowans are treated with competent and qualified practitioners. Licensing requirements in Iowa are very similar to those in surrounding states.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include the staff time needed to manage board activities, which includes managing applications for initial licenses, renewals, reactivations, and reinstatements. Staff salaries to support the work of the Board are covered by the licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.31 of an FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees, not the State. There is no anticipated impact from this rule on state revenues.

Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board has not identified a less restrictive alternative to the licensure of speech pathologists and audiologists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the professions, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of speech pathologists and audiologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the state of Iowa are similar to those of surrounding states. The surrounding states all require similar licensing procedures for speech pathologists and audiologists.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to the licensure of speech pathologists or audiologists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the professions, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of speech pathologists and audiologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). DIAL—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule edits support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a less restrictive alternative to the licensure of speech pathologists and audiologists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the professions, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of speech pathologists and audiologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a less restrictive alternative to the licensure of speech pathologists and audiologists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the professions, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of speech pathologists and audiologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of DIAL. DIAL—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rules support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

These proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. These rules are meant to ensure public safety in terms of licensing requirements for speech pathologists and audiologists. While some licensees could be running a small business, some also work for large hospitals, clinics and educational institutions. To exempt a small business from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 300 and adopt the following **new** chapter in lieu thereof:

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

| | |
|-------------|---|
| CHAPTER 300 | LICENSURE OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS |
| CHAPTER 301 | PRACTICE OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS |
| CHAPTER 302 | RESERVED |
| CHAPTER 303 | CONTINUING EDUCATION FOR SPEECH PATHOLOGISTS AND AUDIOLOGISTS |
| CHAPTER 304 | DISCIPLINE FOR SPEECH PATHOLOGISTS AND AUDIOLOGISTS |

CHAPTER 300

LICENSURE OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

645—300.1(147) Definitions. For purposes of these rules, the following definitions shall apply:

“*ASHA*” means the American Speech-Language Hearing Association.

“*Assistant*” means an unlicensed person who works under the supervision of an Iowa-licensed 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, selection and use of appropriate hearing devices.

“*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.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*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.

“*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—300.11(17A,147,272C) by which an inactive license is restored to active status.

“*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.

“*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, swallowing, 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.

645—300.2(147) Requirements for licensure. The following criteria will apply to licensure:

300.2(1) Applicants will submit a completed online licensure application and pay the required fee.

300.2(2) The application will include:

a. An official copy of a current 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 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.

300.2(3) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

300.2(4) An applicant who has been licensed in another state will provide verification of license from the jurisdiction in which the applicant has most recently been licensed, and additional verifications if necessary to verify at least five years of an independent license as described in subrule 240.10(4), sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

a. Licensee’s name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the license.

645—300.3(147) Educational qualifications.

300.3(1) The applicant shall possess the following:

a. A master’s degree from an accredited school, college or university with a major in speech pathology; or

b. A master’s or doctoral degree from an accredited school, college or university with a major in audiology.

300.3(2) Foreign-trained speech pathologists and audiologists will provide an equivalency evaluation at the licensee’s expense of their educational credentials by one of the following: International Education Research Foundation, Inc., Credentials Evaluation Service. The professional curriculum must be equivalent to that stated in these rules.

645—300.4(147) Examination requirements. The examination required by the board will be the Praxis Examination in speech pathology or audiology. This examination is administered by the

Educational Testing Service. The applicant will make arrangements to take the Praxis Examination in speech pathology or audiology and pay all expenses associated with taking the examination. The applicant will have the examination scores sent directly to the board from the Educational Testing Service.

645—300.5(147) Speech therapy and audiology compact. The rules of the speech therapy and audiology compact commission are incorporated by reference to Iowa Code section 147F.1. A speech therapist or audiologist may practice speech therapy or audiology in Iowa without a license issued by the board if the individual has a current compact privilege to practice in Iowa issued by the speech pathology and audiology compact commission.

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.”

300.6(1) A speech pathology applicant will submit the following to the board:

- a. Evidence of supervision by a speech pathologist with an active, current Iowa license in good standing;
- b. A completed application form and the temporary clinical license fee;
- c. An official copy of the transcript sent directly from the school to the board;
- d. Official verification of completion of not less than 400 hours of supervised clinical training in an accredited college or university; and
- e. Results of the Praxis Examination.

300.6(2) An audiology applicant or an applicant completing a doctoral externship must submit the following to the board:

- a. Evidence of supervision by an audiologist with an active, current Iowa license in good standing. The applicant completing an audiology doctoral externship must show evidence of on-site supervision;
- b. A completed application form and the temporary clinical license fee;
- c. An official copy of the transcript, sent directly from the school to the board;
- d. Official verification of completion of not less than 400 hours of supervised clinical training in an accredited college or university; and
- e. Results of the Praxis Examination.

300.6(3) The plan for supervised clinical experience must be approved by the board before the applicant starts practice and shall:

- a. Include at least nine months of full-time clinical experience, or equivalent;
- b. Include supervision by an Iowa-licensed speech pathologist or audiologist, as appropriate. If the applicant is being supervised by more than one individual, each supervisor must submit a supervised clinical experience plan for approval. If there is a change in the supervised clinical experience plan at any time during the supervised clinical experience, the licensee must contact the board for approval within 30 days of the change;
- c. Be kept by the supervisor for two years from the last date of the clinical experience; and
- d. Include a completed supervised clinical experience report form that shall be submitted to the board of speech pathology and audiology upon the applicant’s successful completion of the nine months of full-time clinical experience. If the applicant was supervised by more than one individual, each supervisor must submit a supervised clinical experience report.

645—300.7(147) Temporary permit.

300.7(1) A nonresident may apply to the board for a temporary permit to practice speech pathology or audiology:

- a. For a period not to exceed three months;
- b. By submitting a letter to support the need for such a permit;

- c. By submitting documents to show that the applicant has substantially the same qualifications as required for licensure in Iowa;
- d. By submitting the documentation prior to the date the applicant intends to begin practice; and
- e. By submitting the temporary permit fee.

300.7(2) The applicant shall receive a final determination from the board regarding the application for a temporary permit.

645—300.8(147) Use of assistants. A licensee will, in the delivery of professional services, utilize assistants only to the extent provided in these rules. Such assistants will use the title provided by these rules.

300.8(1) Duties.

a. *Speech pathology assistant I.* A speech pathology assistant I works with an individual for whom significant improvement is expected within a reasonable amount of time.

b. *Speech pathology assistant II.* A speech pathology assistant II works with an individual for whom maintenance of present level of communication is the goal; or for whom, based on the history and diagnosis, only slow improvement is expected.

c. *Audiology assistant I.* An audiology assistant I is more broadly trained and may be given a variety of duties depending upon the individual's training.

d. *Audiology assistant II.* An audiology assistant II is trained specifically for a single task for screening.

300.8(2) Minimum requirements.

a. A speech pathology assistant I or II or audiology assistant I will satisfy the following minimum requirements:

- (1) Reach the age of majority;
- (2) Complete a high school education, or its equivalent; and
- (3) Complete one of the following:

1. A three-semester-hour (or four-quarter-hour) course in introductory speech and language pathology for speech pathology assistants or in audiology for audiology assistants from an accredited educational institution and 15 hours of instruction in the specific tasks which the assistant will be performing; or

2. A minimum training period comprised of 75 clock hours on instruction and practicum experience.

b. An audiology assistant II will satisfy the following requirements:

- (1) Reach the age of majority.
- (2) Complete a high school education, or its equivalent.
- (3) Complete a minimum of 15 clock hours of instruction and practicum experience in the specific task which the assistant will be performing.

300.8(3) Utilization. Utilization of a speech pathology or audiology assistant requires that a plan be developed by the licensee desiring to utilize that assistant, consisting of the following information:

a. Documentation that the assistant meets minimum requirements;

b. A written plan of the activities and supervision that will be kept by the licensee supervising the assistant. This supervision will include direct on-site observation for a minimum of 20 percent of the assistant's direct patient care for level I speech pathology and level I audiology assistants and 10 percent for level II speech pathology assistants. Level II audiology assistants will be supervised 10 percent of the time. At least half of that time will be direct on-site observation with the other portion provided as time interpreting results;

c. A listing of the facilities where the assistant will be utilized; and

d. A statement, signed by the licensee and the assistant, acknowledging they have read the rules pertaining to assistants.

300.8(4) Maximum number of assistants. A licensee may not utilize more than three assistants unless a plan of supervision is filed and approved by the board.

300.8(5) Supervisor responsibilities. A licensee who utilizes an assistant will have the following responsibilities:

- a.* To be legally responsible for the actions of the assistant in assigned duties with a client;
- b.* To make all professional decisions relating to the management of a client;
- c.* To ensure that the assistant is assigned only those duties and responsibilities for which the assistant has been specifically trained and is qualified to perform;
- d.* To ensure compliance of the assistant(s) under supervision with the provisions of these rules by providing direct observation and supervision of the activities of the assistant; and
- e.* To submit to the board of speech pathology and audiology upon request a copy of the plan of activities and supervision for each assistant and documentation of the dates each assistant was utilized by the licensee.

645—300.9(147) Licensure by endorsement.

300.9(1) The board may issue a license by endorsement to any applicant from the District of Columbia or another state, territory, province or foreign country who has been a licensed speech pathologist or audiologist under the laws of another jurisdiction.

300.9(2) Verification the applicant meets the requirements of rule 645—300.2(147).

300.9(3) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—300.10(147) License renewal.

300.10(1) The biennial license renewal period for a license to practice speech pathology or audiology will begin on January 1 of an even-numbered year and end on December 31 of the next odd-numbered year. The licensee is responsible for renewing the license prior to its expiration.

300.10(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

300.10(3) A licensee seeking renewal will:

a. Meet the continuing education requirements of rule 645—303.2(147) and the mandatory reporting requirements of subrule 300.10(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.

300.10(4) Mandatory reporter training requirements.

a. A licensee who examines, attends, counsels, or treats children and/or dependent adults in the scope of a licensee's professional practice will complete the applicable department of health and human services' training relating to the identification and reporting of child abuse and/or dependent adult abuse. Written documentation of training completion should be maintained for three years. The training is not required if the licensee is engaged in active duty military service or holds a waiver demonstrating a hardship in complying with these training requirements.

b. The board may select licensees for audit of compliance with the requirements in paragraphs 300.11(4)"a" to "b."

300.10(5) A two-year license will be issued after the requirements of the rule are met. If the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

300.10(6) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

300.10(7) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.20(3). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

300.10(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice until the license is reactivated.

645—300.11(17A,147,272C) License reactivation. To apply for reactivation of an inactive license:

300.11(1) Submit a completed reactivation application and pay the nonrefundable application fee.

300.11(2) Provide verification of current competence to practice speech pathology and audiology by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has been most recently licensed and has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 30 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has been most recently licensed and has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 60 hours of continuing education within two years of application for reactivation; or

(3) Verification of passing the Praxis Examination in speech pathology or audiology within the last two years prior to application for reactivation.

645—300.12(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation of the license prior to practicing speech pathology and audiology in this state.

These rules are intended to implement Iowa Code chapters 17A, 147 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 301
“Practice of Speech Pathologists and Audiologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154F, 272C, 147, 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154F, 272C, 147, and
17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:10 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rule provides Iowans, licensees, and the licensee’s employers with definitions relevant to the practice of speech pathologists and audiologists and requirements for telehealth appointments. This rule articulates practice standards and provides a scope of practice for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are costs associated with practice standards because there is often time, effort and money associated with compliance. There are costs to the public associated with this requirement in the form of a payment or co-payment for the telehealth visit. Both the licensee and public assume any costs for technology to complete a telehealth visit. The Board of Speech Pathology and Audiology (Board) believes requirements surrounding telehealth visits are important to ensure that the services provided are of the same quality as those same services would be in person. Conversely, telehealth provides Iowans the ability to access care virtually, which also has the potential to save individuals time and money. The Board does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

Costs to the Department are the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, questions from licensees and the public, and administration of Board meetings. An executive officer supports the work of this Board at approximately 0.31 of a

full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees will benefit from this proposed rule. The rule provides standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are approximately 2,251 people licensed by the Board as audiologists or speech pathologists in Iowa. There are very few complaints submitted to this Board. In 2022, there were a total of two complaints submitted, and the Board issued no public discipline. The Board believes that the benefits achieved justify the costs because the proposed rule provides required guardrails for providing this important service to Iowans. If these professions were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Speech pathology and audiology are regulated in all 50 states.

There are costs associated with this requirement to the public in the form of a payment or co-payment for the telehealth visit. Both the licensee and public assume any costs for technology to complete a telehealth visit. Telehealth appointments usually cost less and lessen the burden on the consumer.

Licensees bear costs in the form of licensing fees.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean lower-skilled individuals providing assessments and necessary services to consumers. An error in assessment could lead to a lack of services or inadequate services provided to a consumer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, questions from licensees and the public, and administration of Board meetings. An executive officer supports the work of this Board at approximately 0.31 of an FTE position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed rule on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are approximately 2,251 people licensed by the Board as audiologists or speech pathologists in Iowa. There are very few complaints submitted to this Board. In 2022, there were a total of two complaints submitted, and the Board issued no public discipline. The Board believes that the benefits achieved justify the costs because the proposed rule provides required guardrails for providing this important service to Iowans. If these professions were not regulated, it could mean that lower-skilled

individuals would provide this service to Iowans, which would be of concern to the Board. Speech pathology and audiology are regulated in all 50 states.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current process. Speech pathology and audiology are medical professions that provide health care to Iowans. Speech pathologists and audiologists require ongoing monitoring for compliance and meeting practice standards. Speech pathologists and audiologists require licensure in all states.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current process. Speech pathology and audiology are medical professions that provide health care to Iowans. Speech pathologists and audiologists require ongoing monitoring for compliance and meeting practice standards. Speech pathologists and audiologists require licensure in all states.

The Department of Inspections, Appeals, and Licensing—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. This rule supports this effort.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current process. Speech pathology and audiology are medical professions that provide health care to Iowans. Speech pathologists and audiologists require ongoing monitoring for compliance and meeting practice standards. If these professions were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Speech pathology and audiology are regulated in all 50 states.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This proposed rule relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The rule is meant to ensure public safety in terms of practice standards for speech pathologists and audiologists. While some licensees could be running a small business, some also work for large hospitals, clinics and educational institutions. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 301 and adopt the following new chapter in lieu thereof:

CHAPTER 301
PRACTICE OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

645—301.1(147) Telehealth visits. A licensee may provide speech pathology or audiology services to a patient utilizing a telehealth visit if the services are provided in accordance with the following:

301.1(1) “Telehealth visit” means the provision of speech pathology or audiology services by a licensee to a patient using technology where the licensee and the patient are not at the same physical location during the appointment.

301.1(2) A licensee engaged in a telehealth visit will utilize technology that is secure and HIPAA-compliant and that includes, at a minimum, audio and video equipment that allows two-way real-time interactive communication between the licensee and the patient. A licensee may use non-real-time technologies to prepare for an appointment or to communicate with a patient between appointments.

301.1(3) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person speech pathology or audiology services. A licensee will not utilize a telehealth visit if the standard of care for the particular speech pathology or audiology service cannot be met using technology.

301.1(4) Prior to the first telehealth visit, a licensee will obtain informed consent from the patient specific to the services that will be provided in a telehealth visit. At a minimum, the informed consent will specifically inform the patient of the following:

a. The risks and limitations of the use of technology to provide speech pathology or audiology services;

b. The potential for unauthorized access to protected health information; and

c. The potential for disruption of technology during a telehealth visit.

301.1(5) A licensee will only provide speech pathology or audiology services using a telehealth visit in the areas of competence wherein proficiency in providing the particular service using technology has been gained through education, training, and experience.

301.1(6) A licensee will identify in the clinical record when speech pathology or audiology services are provided utilizing a telehealth visit.

301.1(7) Speech pathology or audiology services in Iowa through telephonic, electronic, or other means constitute the practice of speech pathology or audiology and require Iowa licensure, regardless of the location of the speech/language pathologist or audiologist.

This rule is intended to implement Iowa Code chapters 147 and 154F.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 303
“Continuing Education for Speech Pathologists and Audiologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154F, 272C, and 147
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154F, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:10 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules set forth continuing education requirements for speech pathologists and audiologists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rule, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that speech pathologists and audiologists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Board of Speech Pathology and Audiology (Board) is not privy to exact costs, but research estimates it to be around \$400 to \$650 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that speech pathologists and audiologists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offer these courses, so the Board is not privy to exact costs, but research estimates it to be around \$400 to \$650 every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 30 hours of continuing education for these license types every two years. The Board has agreed to reduce hours to 26 for these professions, which is reflected in the proposed repromulgated rules. The proposed reduced hours would result in a cost savings to individual licensees for an estimated total savings of \$53 to \$87 every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.31 full—time equivalent (FTE) position, which includes questions from the public and licensees, such as practice standards, continuing education, and Board meeting administration.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact from these proposed rules on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet these requirements. The Board has recommended a reduction in hours, reflected in the proposed rules for repromulgation. The proposed reduced hours would result in an estimated cost savings to individual licensees of \$53 to \$87 every two years.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and, ultimately, public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives include reducing the amount of continuing education required. A review of surrounding states has shown that other states do successfully manage continuing education programs with fewer hours required per renewal cycle. Currently, Iowa requires 30 hours of continuing education for these license types every two years. Nebraska, Kansas, Missouri and Illinois require 20 hours. South Dakota requires 20 hours for speech pathologists and 24 hours for audiologists. Minnesota requires 30 hours. After discussions with the Board regarding this topic, board members were in agreement to reduce the total number of hours every two years from 30 to 26.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board considered reducing the number of continuing education hours and ultimately went forward recommending reduced hours.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did propose a less restrictive alternative to the current rules, recommending a reduced number of continuing education hours.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules reduce the number of continuing education hours to be more consistent with neighboring states. The cost of continuing education is estimated at \$13 to \$22 per hour. The proposed reduced hours would result in an estimated cost savings to individual licensees of \$53 to \$87 every two years.

Speech pathologist and audiologist licensees practice in a number of settings, including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. The cost of continuing education could be greater for small business owners as they would be responsible for the entire cost, but the proposed reduction in continuing education hours ultimately reduces the burden on the licensee.

Conversely, the entities that provide continuing education may have a negative impact on their revenue due to less demand for continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 303 and adopt the following new chapter in lieu thereof:

CHAPTER 303
CONTINUING EDUCATION FOR SPEECH PATHOLOGISTS
AND AUDIOLOGISTS

645—303.1(147) Definitions. For the purpose of these rules, the following definitions will 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.

“Continuing education” means 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.

“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.

“License” means license to practice.

“Licensee” means any person licensed to practice speech pathology or audiology or both in the state of Iowa.

645—303.2(147) Continuing education requirements.

303.2(1) The biennial continuing education compliance period will run concurrently with each two-year period between January 1 of each even-numbered year and December 31 of each odd-numbered year. Each biennium, a person who is licensed to practice as a speech pathology or audiology licensee in this state will be required to complete a minimum of 30 hours of continuing education approved by the board. A person holding licensure in both speech pathology and audiology must meet the requirements for each profession. Continuing education hours do not carry over.

303.2(2) Requirements of new licensees. Those persons licensed for the first time will 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.

303.2(3) Hours of continuing education credit may be obtained by participation in 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).

303.2(4) No hours of continuing education will be carried over into the next biennium except as stated for second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

303.2(5) The licensee is responsible for the cost of continuing education.

645—303.3(147,272C) Standards.

303.3(1) General criteria. A continuing education program or activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education program or activity:

a. Meets the definition of continuing education as defined in rule 645—303.1(147);

b. Is conducted by individuals who have specialized education, training and experience in the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

c. Fulfills state program goals, objectives, or both; and

d. Provides proof of attendance, including:

(1) Date(s), location, course title, presenter(s);

- (2) Number of program contact hours; and
- (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

303.3(2) Specific criteria.

a. Subject matters that integrally relate to the practice of speech pathology or audiology or both that will be considered for approval are:

(1) Basic communication processes. Information (beyond the basic licensure requirements) applicable to the normal development and use of speech, language, and hearing, i.e., anatomic and physiologic bases for the normal development and use of speech, language, and hearing; physical bases and processes of the production and perception of speech, language, and hearing; linguistic and psycholinguistic variables related to normal development and use of speech, language, and hearing; and technological, biomedical, engineering, and instrumentation information which would enable expansion of knowledge in the basic communication processes.

(2) Professional areas. Information pertaining to disorders of speech, language, and hearing, i.e., various types of disorders of communication, their manifestations, classification and causes; evaluation skills, including procedures, techniques, and instrumentation for assessment; and management procedures and principles in habilitation and rehabilitation of communication disorders. The board will accept dysphagia courses provided by qualified instructors.

(3) Related areas. Study pertaining to the understanding of human behavior, both normal and abnormal, as well as services available from related professions which apply to the contemporary practice of speech-language pathology/audiology, e.g., theories of learning and behavior; services available from related professions that also deal with persons who have disorders of communication; information from these professions about the sensory, physical, emotional, social or intellectual states of child or adult; professional ethics; clinical supervision; counseling; and interviewing.

Unacceptable subject matter includes personal development, human relations, collective bargaining, and tours. A licensee may elect to take the Praxis Examination in speech pathology or audiology in lieu of earning continuing education credits. The licensee will have the results of the examination sent to the board by the agency administering the examination.

b. 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.

c. A combined total of six hours per biennium may be used for the following activities:

- (1) Government regulations;
- (2) CPR, child abuse and dependent adult abuse; and
- (3) A maximum of two hours may be used for business-related topics.

d. An applicant will provide official transcripts indicating successful completion of academic courses which apply to the field of speech pathology and audiology in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

e. Continuing education credit may be earned by participation in continuing education programs and activities which meet the criteria in this rule and which are completed through journal readings, teleconference or videoconference participation, and online program participation. In addition, such programs and activities must include a posttest that the participant must pass in order to receive continuing education credit.

f. Continuing education will 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.

These rules are intended to implement Iowa Code section 272C.2 and chapter 147.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 304
“Discipline for Speech Pathologists and Audiologists”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154F, 272C, 147, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154F, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11:10 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone: +1 402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rule provides protection to Iowans because it publicly defines disciplinary options when a speech pathologist or audiologist fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against a licensee’s license. Iowans have the ability to submit a complaint to the Board of Speech Pathology and Audiology (Board), which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Health and Human Services Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the speech pathologist and audiologist professions and are therefore excluded from the general disciplinary chapter. The grounds for discipline required in this rule are related to unethical conduct and are required by Iowa Code chapter 154F.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The proposed rule in this chapter is related to standard of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care and medical guides. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per public order.

Costs to the Department include the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.31 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees relating to practice standards, continuing education, and Board meeting administration. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this proposed rule is to ensure public safety and maintain a high level of care for Iowans. The Board receives a minimal number of complaints and issues a minimal number of disciplinary actions. In 2022, there were two complaints submitted and the Board issued no public discipline. There is a large number of speech pathologists and audiologists in this state, estimated at approximately 2,251 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, speech pathology and audiology are health care professions that are technical in nature and require a high level of skill, so the Board believes that regulation is necessary.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there is only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of interpreting and transliterating requires skill and precision.

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.31 of an FTE. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this proposed rule are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$0 was paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of speech pathology and audiology requires skill and precision. The Board receives a minimal number of complaints and issues a minimal number of disciplinary actions. In 2022, the Board received two complaints and issued no public discipline. There is a large number of speech pathologists and audiologists in this state, estimated at approximately 2,251 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, speech pathologists and audiologists are health care professions that are technical in nature and require a high level of skill, so the Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy Health and Human Services Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the speech pathology and audiology professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules. The grounds for discipline required in this proposed rule are related to unethical conduct and are required by Iowa Code chapter 154F.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The specific ground for discipline required in this rule is related to unethical conduct and is required by Iowa Code chapter 154F.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rule relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rule is meant to ensure public safety in terms of practice standards for speech pathologists and audiologists. While some speech pathologists and audiologists are running a small business of their own, they practice in a number of settings, including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 304 and adopt the following new chapter in lieu thereof:

CHAPTER 304
DISCIPLINE FOR SPEECH PATHOLOGISTS AND AUDIOLOGISTS

645—304.1(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—13.3(272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in rule 645—Chapter 13.

304.1(1) Violation of the following code of ethics:

- a. Licensees will provide ethical, professional services, conduct research with honesty and compassion, and respect the dignity, worth and rights of those served.
- b. Claims of expected clinical results will be based upon sound evidence and shall accurately convey the probability and degree of expected improvement.
- c. Records will be adequately maintained for the period of time required by applicable state and federal laws.
- d. Persons served professionally or the files of such persons will be used for teaching or research purposes only after obtaining informed consent from those persons or from the legal guardians of such persons.
- e. Information of a personal or professional nature obtained from persons served professionally will be released only to individuals authorized by the persons receiving professional service or to those individuals to whom release is required by law.
- f. Licensees who engage in research will comply with all institutional, state, and federal regulations that address any aspects of research, including those that involve human participants and animals, such as those promulgated in the current Responsible Conduct of Research by the U.S. Office of Research Integrity.
- g. Individuals in administrative or supervisory roles will not require or permit their professional staff to provide services or conduct clinical activities that compromise the staff members' independent and objective professional judgment.
- h. Relationships between professionals and between a professional and a client shall be based on high personal regard and mutual respect without concern for race, religious preference, sex, age, ethnicity, gender identity/gender expression, sexual orientation, national origin, disability, culture, language or dialect.

i. Referral of clients for additional services or evaluation and recommendation of sources for purchasing appliances will be without any consideration for financial or material gain to the licensee making the referral or recommendation for purchase.

j. Licensees who dispense products to persons served professionally will provide clients with freedom of choice for the source of services and products.

k. 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.”

l. Licensees will comply with universal newborn and infant hearing screening requirements within Iowa Code section 135.131 and 641—Chapter 3.

304.1(2) Reserved.

This rule is intended to implement Iowa Code chapters 147 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 326
“Licensure of Physician Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 148C.3, 148C.5, 272C.3
and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148C, 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
1:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing (DIAL) and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

This rule sets minimum standards for licensure as a physician assistant in Iowa. Iowa residents, licensees, and employers benefit from the rule as it articulates the processes by which individuals apply for licensure, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications and exam requirements. The rule also incorporates provisions directed by House File 424 to determine the terms of collaboration for a physician assistant who enters into independent practice.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no direct costs imposed on the public to comply with the rulemaking; however, there is a cost to the applicant to meet the requirements of the statute and rulemaking. The application fee for a physician assistant license is \$120 and the biannual renewal fee is \$120. Applicants for licensure must successfully pass the certifying examination conducted by the National Commission on Certification of Physician Assistants (NCCPA); the fee for this exam is \$550. These costs are comparable to surrounding states' licensing fees for physician assistants. Nebraska's application fee is \$150 and the biannual renewal fee is \$110; Minnesota's application fee is \$280.50 and the annual renewal fee is \$115. Nebraska and Minnesota both require NCCPA certification examination with a fee of \$550.

The licensee would also have costs related to educational requirements and exam requirements. The Board of Physician Assistants has not identified an exact cost of education for this field because the cost varies depending on the school the licensee chooses to attend to meet those requirements.

Costs incurred by the agency are for staff time needed to manage the full scope of Board activities, which include oversight of practice standards, triaging questions from licensees and the public, and administering Board meetings. An executive officer supports the work of the Board at approximately 0.34 full-time equivalent (FTE) position. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public during their practice. Physician assistants are medical providers who require certain skills and training to effectively help and treat their patients.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide the academic training for physician assistants to obtain their license in the state of Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the exam. Because the cost of education varies depending on the institution the person attends, the Board is unable to put an exact cost on education or exam preparation.

Licensing fees are \$120 for an initial license and \$120 for each biannual renewal period.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs incurred by the agency are for staff time to manage the full scope of Board activities, which include oversight of practice standards, triaging questions from licensees and the public, and administering Board meetings. An executive officer supports the work of the Board at approximately 0.34 FTE position. Staff salaries are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of physician assistants in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost effective alternative to the licensure of physician assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession; however, the Board would be concerned about the public safety of Iowans in that scenario. Doing so would also place Iowa out of line with the rest of the country. The regulation and licensure of physician assistants is consistent across the country.

Due to state government alignment this board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the licensure of physician assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession; however, the Board would be concerned about the public safety of Iowans in that scenario. Doing so would also place Iowa out of line with the rest of the country. The regulation and licensure of physician assistants is consistent across the country.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of physician assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession; however, the Board would be concerned about the public safety of Iowans in that scenario. Doing so would also place Iowa out of line with the rest of the country. The regulation and licensure of physician assistants is consistent across the country.

Due to state government alignment, this Board is now part of the DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for physician assistants. While some physician assistants may be running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 326 and adopt the following new chapter in lieu thereof:

PHYSICIAN ASSISTANTS

| | |
|-------------|---|
| CHAPTER 326 | LICENSURE OF PHYSICIAN ASSISTANTS |
| CHAPTER 327 | PRACTICE OF PHYSICIAN ASSISTANTS |
| CHAPTER 328 | CONTINUING EDUCATION FOR PHYSICIAN ASSISTANTS |
| CHAPTER 329 | DISCIPLINE FOR PHYSICIAN ASSISTANTS |

CHAPTER 326 LICENSURE OF PHYSICIAN ASSISTANTS

645—326.1(148C) Definitions.

“*Active license*” means a license that is current and has not expired.

“*Approved program*” means a program for the education of physician assistants which has been accredited by the Accreditation Review Commission on Education for the Physician Assistant, or its successor, or, if accredited prior to 2001, either by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs.

“*Board*” means the board of physician assistants.

“*CME*” means continuing medical education.

“*Collaboration*” means consultation with or referral to the appropriate physician or other health care professional by a physician assistant as indicated by the patient’s condition; the education, competencies, and experience of the physician assistant; and the standard of care.

“*Department*” means the department of inspections, appeals, and licensing.

“*Direction*” means authoritative policy or procedural guidance for the accomplishment of a function or activity.

“*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 include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Independent practice*” means the practice of a physician assistant that is organized as a professional corporation under Iowa Code chapter 496C or a professional limited liability company under Iowa Code chapter 489.

“*Licensee*” means a person licensed by the board as a physician assistant to provide medical services.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice as a physician assistant to an applicant who is or has been licensed in another state.

“*Locum tenens*” means the temporary substitution of one licensed physician assistant for another.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of physician assistants who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*NCCPA*” means the National Commission on Certification of Physician Assistants.

“*Opioid*” means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain or opioid use disorder.

“*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician supervising a physician assistant practicing in a federal facility or under federal authority will not be required to obtain licensure beyond licensure requirements mandated by the federal government for supervising physicians.

“*Physician assistant*” or “*PA*” means a person licensed as a physician assistant by the board.

“*Prescription monitoring program database*” or “*PMP database*” means the Iowa prescription monitoring program database administered by the Iowa board of pharmacy pursuant to Iowa Code chapter 124, subchapter VI, and 657—Chapter 37.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—326.19(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in rule 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.

“*Supervising physician*” means a physician who supervises the medical services provided by the physician assistant engaged in independent practice consistent with the physician assistant’s education, training, or experience.

“*Supervision*” means the availability of a physician for consultation and collaboration on the activities of a physician assistant who is engaged in independent practice and who has not practiced for at least two years under a supervising physician or in collaboration with an appropriate physician or other health care professional. Supervision will not be construed as requiring the personal presence of a supervising physician at the place where such services are rendered except insofar as the personal presence is expressly required by these rules or by Iowa Code chapter 148C. Supervision shall not be construed to apply to any physician assistant who is not engaging in independent practice or who is engaged in independent practice but has at least two years of practice under a supervising physician or in collaboration with an appropriate physician or other health care professional.

“*Supply prescription drugs*” means to deliver to a patient or the patient’s representative a quantity of prescription drugs or devices that are properly packaged and labeled.

645—326.2(148C) Initial licensure.

326.2(1) To apply for a license, the applicant will complete an online application packet and pay the nonrefundable application fee.

a. If licensed in another jurisdiction, the applicant will complete the licensure by endorsement application and submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed. The applicant will submit proof of completing 100 CME hours for each biennium since initial certification.

b. A person who is licensed in another jurisdiction who cannot satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

c. An application not completed according to guidelines will not be reviewed by the board.

d. The applicant will request the approved program for the education of physician assistants to submit official copies of the applicant's transcript to the board office. Exception: An applicant who is not a graduate of an approved program but who passed the NCCPA initial certification examination prior to 1986 is exempt from the graduation requirement.

e. The applicant will request the NCCPA, or its successor agency, to send a copy of the initial certification to the board office.

f. In lieu of paragraphs "*d*" and "*e*," an applicant may provide documentation from the Federation Credentials Verification Service (FCVS) of the Federation of State Medical Boards as primary source verification for identity, education and national certification information.

326.2(2) Licensees who were issued their licenses within six months prior to the renewal date will not be required to renew their licenses until the renewal date two years later.

326.2(3) Incomplete applications that have been on file in the board office for more than two years will be:

- a.* Considered invalid and destroyed; or
- b.* Maintained upon written request from the candidate.

645—326.3(148C) Temporary licensure.

326.3(1) A temporary license may be issued for an applicant who has not taken the NCCPA initial certification examination or successor agency examination or is waiting for the results of the examination.

326.3(2) The applicant must comply with subrule 326.2(1), with the exception of paragraphs "*d*" and "*e*."

326.3(3) A temporary license will be valid for one year from the date of issuance.

326.3(4) The temporary license will be renewed only once upon the applicant's showing proof that, through no fault of the applicant, the applicant was unable to take the certification examination recognized by the board. Proof of inability to take the certification examination will be submitted to the board office with written request for renewal of a temporary license, accompanied by the temporary license renewal fee.

326.3(5) If the temporary licensee fails the certification examination, the temporary licensee must cease practice immediately and surrender the temporary license by the next business day.

326.3(6) There is no additional fee for converting temporary licensure to permanent licensure.

326.3(7) The applicant will ensure that certification of completion is sent to the board directly from an approved program for the education of physician assistants. The certification of completion must be signed by a designee from the approved program.

645—326.4(148C) Examination requirements. The applicant for licensure as a physician assistant will successfully pass the certifying examination conducted by the National Commission on Certification of Physician Assistants or a successor examination approved by the board of physician assistants.

645—326.5(148C) Two-year physician supervision.

326.5(1) Eligibility determinants. A physician with an active permanent, special, or temporary Iowa license who is actively engaged in the practice of medicine in Iowa may supervise a physician assistant. A physician is ineligible to supervise a physician assistant for any of the following reasons:

a. The physician is subject to a disciplinary order of the board that restricts or rescinds the physician's authority to supervise or collaborate with a physician assistant. The physician may supervise or collaborate with a physician assistant to the extent that the order allows.

b. The physician does not have a written supervisory agreement in place with each physician assistant who is practicing in an independent practice arrangement, as defined in Iowa Code section 148C.1(5) and supervised by the physician pursuant to rule 645—326.7(148C).

326.5(2) Reserved.

645—326.6(148C) Exemptions from this chapter This chapter does not apply to the following:

326.6(1) A physician working in a federal facility or under federal authority when the provisions of this chapter conflict with federal regulations.

326.6(2) A physician who supervises a physician assistant providing medical care created by an emergency or a state or local disaster pursuant to Iowa Code section 148C.4(2).

326.6(3) A physician assistant who is not practicing in an independent practice arrangement, as defined in Iowa Code section 148C.1(5).

326.6(4) A physician assistant who is practicing in an independent practice arrangement, as defined in Iowa Code section 148C.1(5), who has met the criteria in rules 645—326.7(148C) and 645—326.8(148C), or who has met the criteria in rule 645—326.11(148C).

645—326.7(148C) Supervisory agreements.

326.7(1) A physician assistant who is practicing in an independent practice arrangement, as defined in Iowa Code section 148C.1(5), and who has not previously practiced under a supervising physician or in collaboration with the appropriate physician or other health care professional for a period of at least two years will establish a written supervisory agreement with a physician for a period of at least two years. A sample supervisory agreement form is available from the board. The purpose of the supervisory agreement is to define the nature and extent of the supervisory relationship and the expectations of each party. The supervisory agreement will take into account the physician assistant's demonstrated skills, training and experience, proximity of the supervising physician to the physician assistant, and the nature and scope of the medical practice. The supervising physician will maintain a copy of the supervisory agreement and provide a copy of the agreement to the board upon request. The supervisory agreement will, at a minimum, address the following provisions:

a. Review of requirements. The supervising physician and the physician assistant will review all of the requirements of physician assistant licensure, practice, supervision, and delegation of medical services as set forth in Iowa Code chapter 148C, these rules, and 645—Chapters 326 to 329.

b. Assessment of education, training, skills, and experience. Each supervising physician will assess the education, training, skills, and relevant experience of the physician assistant prior to providing supervision. Each supervising physician and physician assistant will ensure that the other party has the appropriate education, training, skills, and relevant experience necessary to successfully collaborate on patient care delivered by the team. The method for assessing and providing feedback regarding the physician assistant's education, training, skills, and experience will be reflected in the supervisory agreement.

326.7(2) The supervisory agreement between the physician assistant and the physician will address all of the following:

a. The medical services the supervising physician delegates to the physician assistant. The medical services and medical tasks delegated to and provided by the physician assistant will be in compliance with 645—subrule 327.1(1). All delegated medical services will be within the scope of practice of the supervising physician and the physician assistant.

b. Methods for communication between the physician assistant and the physician. Each supervising physician and physician assistant will conduct ongoing discussions and evaluation of the supervisory agreement, including supervision; expectations for both parties; assessment of education, training, skills, and relevant experience; review of delegated services; review of the medical services provided by the physician assistant; and the types of cases and situations when the supervising physician expects to be consulted.

(1) The plan for completing and documenting chart reviews. A licensed physician within the same facility or health care system as the physician assistant will conduct an ongoing review of a representative sample of the physician assistant's patient charts encompassing the scope of the physician assistant's practice. The finding of the review will be discussed with the physician assistant in a manner determined by the practice in consultation with the physician assistant's primary supervising physician.

(2) The expectations and plan for alternate supervision. The supervising physician will ensure an alternate supervising physician is available for a timely consultation and will ensure that the physician assistant is notified of the means by which to reach the alternate supervising physician.

645—326.8(148C) Two-year collaborative practice agreement. For a period of two years following the completion of a minimum of two years of supervised practice pursuant to rule 645—326.7(148C), a physician assistant in an independent practice arrangement, as defined in Iowa Code section 148C.1(5), will establish and maintain a written collaborative practice agreement with a physician.

645—326.9(148C) Eligibility determinants.

326.9(1) A physician with an active permanent, special, or temporary Iowa license who is actively engaged in the practice of medicine in Iowa may hold a collaborative practice agreement with a physician assistant. A physician is ineligible to serve as a collaborating physician under this chapter for any of the following reasons:

a. The physician is subject to a disciplinary order of the board that restricts or rescinds the physician's authority to supervise or collaborate with a physician assistant. The physician may collaborate with a physician assistant to the extent that the order allows.

b. The physician does not have a written collaborative practice agreement in place with each physician assistant who is practicing in an independent practice arrangement, as defined in Iowa Code section 148C.1(5) and engaged in a collaborative practice arrangement pursuant to this chapter.

326.9(2) Reserved.

645—326.10(148C) Collaborative practice agreements.

326.10(1) The purpose of the collaborative practice agreement is to define the nature and extent of the collaborative practice relationship and the expectations of each party. The collaborative practice agreement will take into account the physician assistant's demonstrated skills, training, and experience, proximity of the collaborating physician to the physician assistant, and the nature and scope of the medical practice. The collaborating physician and the physician assistant will maintain a copy of the collaborative practice agreement and provide a copy of the agreement to the board upon request. The collaborative practice agreement will be signed by both the collaborating physician and the physician assistant, and at a minimum address the following provisions:

a. Methods for communication between the physician assistant and the physician. Each collaborating physician and physician assistant will conduct ongoing discussions and evaluation of the collaborative practice agreement, including expectations for both parties; the types of cases and situations when the collaborating physician can expect to be consulted; and the frequency and means of communication between the two parties. For purposes of this paragraph, communication may consist of, but is not limited to, in-person meetings or two-way, interactive communication directly between the collaborating physician and the physician assistant via telephone, secure messaging, electronic mail, or chart review.

b. Expectations and plan for alternate collaboration. The physician assistant will ensure the primary or an alternate collaborating physician is available for a timely consultation regarding patient care and will ensure both the physician assistant and the primary or alternate collaborating physician are aware of the means by which to reach each other for communication.

c. The medical services provided by the physician assistant. The medical services and medical tasks provided by the physician assistant will comply with 645—subrule 327.1(1). All medical services will be within the scope of practice of the collaborating physician and the physician assistant.

326.10(2) Reserved.

645—326.11(148C) Out-of-state licensees.

326.11(1) A physician assistant who has been previously licensed and practiced in another state and who obtains a license to practice in Iowa will be subject to the following requirements, if the physician assistant enters into an independent practice arrangement, as defined in Iowa Code section 148C.1(5).

a. If the physician assistant has not previously been supervised by a physician for at least two years, the physician assistant will be supervised by a physician for a minimum of two years in compliance with rule 645—326.7(148C) and will then establish a collaborative practice agreement for a minimum of two years in compliance with rule 645—326.8(148C).

b. If the physician assistant has previously been supervised by a physician for at least two years, the physician assistant will establish a collaborative practice agreement for a minimum of two years in compliance with rule 645—326.10(148C).

c. If the physician assistant has previously been supervised by a physician for at least four years, the physician assistant will practice in compliance with Iowa Code chapter 148C.

326.11(2) Reserved.

645—326.12(148C) After two-year collaborative practice agreement. A physician assistant who enters into an independent practice arrangement, as defined in Iowa Code section 148C.1(5), who has met the criteria in rules 645—326.7(148C) and 645—326.8(148C) or who has met the criteria in rule 645—326.11(148C), will practice in compliance with Iowa Code chapter 148C.

645—326.13(148C) Collaboration with all members of the care team. Pursuant to Iowa Code section 148C.4(3), the degree of collaboration between a physician assistant who has met the criteria in subrule 326.5(1) and the appropriate member of a health care team will be determined at the practice level, and may involve decisions made by the medical group, hospital service, supervising physician, or employer of the physician assistant, or the credentialing and privileging system of a licensed health care facility.

645—326.14(148C) License renewal.

326.14(1) The license renewal period for a license to practice will begin on October 1 and end on September 30 two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

326.14(2) 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 date two years later.

326.14(3) A licensee applying for renewal will:

a. Meet the continuing education requirements of rule 645—328.2(148C) and the mandatory reporting requirements of subrule 326.9(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. Complete the online renewal application, pay the fee, and attach a certificate of completing continuing education hours before the expiration date.

326.14(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 will indicate on the renewal application completion of training in child abuse identification and reporting as required by Iowa Code section 232.69(3) "b" in the previous three years, or condition(s) for waiver of this requirement as identified in paragraph 326.9(4) "e."

b. A licensee who, in the course of employment responsibilities, examines, attends, counsels or treats adults in Iowa will indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 326.9(4) "e."

c. The course(s) will be the curriculum provided by the Iowa department of health and human services.

d. The licensee will maintain written documentation for three years after mandatory training as identified in paragraphs 326.9(4) "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse will 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.

f. The board may select licensees for audit of compliance with the requirements in paragraphs 326.9(4) “a” to “e.”

326.14(5) Upon receiving the information required by this rule and the required fee, a two-year license will be issued. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

326.14(6) A person licensed to practice as a physician assistant will keep the license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

326.14(7) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.14(4). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

326.14(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a physician assistant in Iowa until the license is reactivated. A licensee who practices as a physician assistant in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—326.15(148C,88GA,ch1020) Use of title. A physician assistant licensed under Iowa Code chapter 148C may use the words “physician assistant” after the person’s name or signify the same by the use of the letters “PA.” A person who meets the qualifications for licensure under Iowa Code chapter 148C but does not possess a current license may use the title “PA” or “physician assistant” but may not act or practice as a physician assistant unless licensed under Iowa Code chapter 148C.

645—326.16(148C) Address change. The physician assistant will notify the board of any change in permanent address within 30 days of its occurrence.

645—326.17(148C) Student physician assistant.

326.17(1) Any person who is enrolled as a student in an approved program will comply with the rules set forth in this chapter. A student is exempted from licensure requirements.

326.17(2) Notwithstanding any other provisions of these rules, a student may perform medical services when they are rendered within the scope of an approved program.

645—326.18(148C) Recognition of an approved program. The board shall recognize a program for education and training of physician assistants if it is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor, or, if accredited prior to 2001, either by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs.

This rule is intended to implement Iowa Code section 148C.2.

645—326.19(17A,147,272C) Requirements for reactivation. To apply for reactivation, a licensee will:

326.19(1) Complete an online reactivation application and pay the nonrefundable reactivation fee.

326.19(2) Provide verification of current competence to practice as a physician assistant by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Send verification. If licensed in another jurisdiction, submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed.

(2) Submit proof. Submit proof of completing 100 hours of continuing education within two years of application for reactivation or NCCPA or successor agency certification.

b. If the license has been on inactive status for more than five years, an applicant must:

(1) Send verification. Submit a license verification document that discloses if disciplinary action was taken against applicant from every jurisdiction in which the applicant has been licensed.

(2) Verification of completing 200 hours of continuing education within two years of application for reactivation, of which at least 40 percent of the hours completed will be in Category I, or NCCPA or successor agency certification.

645—326.20(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 rule 645—326.19(17A,147,272C) prior to practicing as a physician assistant in this state.

645—326.21(148C) Employer criteria. Nothing in these administrative rules shall prevent employers from establishing additional employment criteria for the supervision and collaboration of a physician assistant.

These rules are intended to implement Iowa Code chapters 17A, 147, 148C and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 327
“Practice of Physician Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 148C.3, 148C.5, 272C.3 and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148C and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
1:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

This proposed rulemaking articulates the medical scope of practice that a physician assistant can provide based on the physician assistant’s education, training, and experience. The rulemaking provides Iowans, licensees, and their employers with more information on the accepted minimum standards for the practice of this profession in this state.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are costs to the licensee associated with meeting practice standards. These standards include minimum prerequisite training criteria for the provision of services, minimum practice and prescribing standards that a licensee must meet, and minimum standards for the provision of telemedicine services.

The Board of Physician Assistants does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

Costs to the agency are for the staff time needed to manage the full scope of Board activities, which include oversight of practice standards, questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.34 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this rulemaking. The rulemaking provides standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public is benefited by knowing that it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. Since 2021, there have been just 48 complaints filed among the 2,165 licensees in the state. This relatively low level of complaints demonstrates that the rules are clearly articulating minimum acceptable standards for practice and helping licensees to establish practice arrangements that align with Iowa law.

There are costs to the licensee associated in meeting practice standards. These standards include minimum prerequisite training criteria for the provision of services, minimum practice and prescribing standards that a licensee must meet, and minimum standards for the provision of telemedicine services. The Board does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. The cost of inaction would be increasing the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage the full scope of Board activities, which include oversight of practice standards, questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.34 FTE position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. Since 2021, there have been just 48 complaints

filed among the 2,165 licensees in the state. This relatively low level of complaints demonstrates that the rules are clearly articulating minimum acceptable standards for practice and helping licensees to establish practice arrangements that align with Iowa law. Licensure of physician assistants is the supported model for regulation in all 50 states.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Licensing is the highest form of regulation. Licensure of physician assistants is the supported model for regulation in all 50 states. The standards for practice articulated in these rules could be reduced; however, the Board would have concerns about the potential for harm to Iowa patients. 2023 Iowa Acts, House File 424, makes significant changes to the permissible practice arrangements for physician assistants in Iowa. This rulemaking provides the foundational practice expectations that will help to guide licensees as they move into these new arrangements.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Licensing is the highest form of regulation. Licensure of physician assistants is the supported model for regulation in all 50 states. The standards for practice articulated in these rules could be reduced; however, the Board would have concerns about the potential for harm to Iowa patients. House File 424 makes significant changes to the permissible practice arrangements for physician assistants in Iowa. This rulemaking provides the foundational practice expectations that will help to guide licensees as they move into these new arrangements.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Licensing is the highest form of regulation. Licensure of physician assistants is the supported model for regulation in all 50 states. The standards for practice articulated in these rules could be reduced; however, the Board would have concerns about the potential for harm to Iowa patients. House File 424 makes significant changes to the permissible practice arrangements for physician assistants in Iowa. This rulemaking provides the foundational practice expectations that will help to guide licensees as they move into these new arrangements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for physician assistants. While some physician assistants may be running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who

sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 327 and adopt the following **new** chapter in lieu thereof:

CHAPTER 327
PRACTICE OF PHYSICIAN ASSISTANTS

645—327.1(148C,88GA,ch1020) Duties. The medical services to be provided by the physician assistant are those for which the physician assistant has been prepared by education, training, or experience and is competent to perform. The ultimate role of the physician assistant cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility a physician assistant may assume requires that, at the conclusion of the formal education, the physician assistant possess the knowledge, skills, and abilities necessary to provide those services appropriate to the practice setting. The physician assistant's services may be utilized in any clinical settings including but not limited to the office, the ambulatory clinic, the hospital, the patient's home, extended care facilities, and nursing homes.

327.1(1) A physician assistant's duties relating to prescribing, dispensing, ordering, administering, and procuring drugs and medical devices include all of the following:

a. Administering any drug.

b. Prescribing, dispensing, ordering, administering, and procuring drugs and medical devices. A physician assistant may plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions including but not limited to durable medical equipment, nutrition, blood and blood products; and diagnostic support services including but not limited to home health care, hospice, and physical and occupational therapy. The prescribing and dispensing of drugs may include Schedule II through V substances, as described in Iowa Code chapter 124, and all legend drugs.

c. A physician assistant may prescribe drugs and medical devices subject to all of the following conditions:

(1) The physician assistant will have passed the national certifying examination conducted by the National Commission on the Certification of Physician Assistants or its successor examination approved by the board. Physician assistants with temporary licenses may order drugs and medical devices only with the prior approval and direction of a supervising physician or another collaborating health care professional. Prior approval may include discussion of the specific medical problems with a supervising physician or another collaborating health care professional prior to the patient being seen by the physician assistant.

(2) The physician assistant must comply with appropriate federal and state regulations.

(3) If a physician assistant prescribes or dispenses controlled substances, the physician assistant must register with the federal Drug Enforcement Administration.

(4) The physician assistant may prescribe or order Schedule II controlled substances which are listed as depressants in Iowa Code chapter 124.

(5) A physician assistant who is practicing under a supervising physician pursuant to rule 645—326.7(148C) will not prescribe substances that the physician assistant's supervising physician does not have the authority to prescribe, except as allowed by paragraph 327.1(2) "n."

(6) The physician assistant may prescribe, supply, and administer drugs and medical devices in all settings, including but not limited to hospitals, health care facilities, health care institutions, clinics, offices, health maintenance organizations, and outpatient and emergency care settings.

(7) A physician assistant may request, receive, and supply sample drugs and medical devices.

(8) The board of physician assistants will be the only board to regulate the practice of physician assistants relating to prescribing and supplying prescription drugs, controlled substances, and medical devices.

d. Supplying properly packaged and labeled prescription drugs, controlled substances, or medical devices when pharmacist services are not reasonably available or when it is in the best interest of the patient.

(1) If the physician assistant is the prescriber of the medications supplied pursuant to this paragraph, the medications supplied will be for the purpose of accommodating the patient and will not be sold for more than the cost of the drug and reasonable overhead costs as they relate to supplying prescription drugs to the patient and not at a profit to the physician or physician assistant.

(2) A nurse or staff assistant may assist the physician assistant in supplying medications.

327.1(2) The medical services to be provided by the physician assistant also include, but are not limited to, the following:

a. The initial approach to a patient of any age group in any setting to elicit a medical history and perform a physical examination.

b. Assessment, diagnosis and treatment of medical or surgical problems and recording the findings.

c. Order, interpret, or perform laboratory tests, X-rays or other medical procedures or studies.

d. Performance of therapeutic procedures such as injections, immunizations, suturing and care of wounds, removal of foreign bodies, ear and eye irrigation and other clinical procedures.

e. Performance of office surgical procedures including, but not limited to, skin biopsy, mole or wart removal, toenail removal, removal of a foreign body, arthrocentesis, incision and drainage of abscesses.

f. Assisting in surgery.

g. Prenatal and postnatal care and assisting a physician in obstetrical care.

h. Care of orthopedic problems.

i. Performing and screening the results of special medical examinations including, but not limited to, electrocardiogram or Holter monitoring, radiography, audiometric and vision screening, tonometry, and pulmonary function screening tests.

j. Instruction and counseling of patients regarding physical and mental health on matters such as diets, disease, therapy, and normal growth and development.

k. Function in the hospital setting by performing medical histories and physical examinations, making patient rounds, recording patient progress notes and other appropriate medical records, assisting in surgery, performing or assisting with medical procedures, providing emergency medical services and issuing, transmitting and executing patient care orders as delegated by the supervising physician.

l. Providing services to patients requiring continuing care (i.e., home, nursing home, extended care facilities).

m. Referring patients to specialty or subspecialty physicians, medical facilities or social agencies as indicated by the patients' problems.

n. Immediate evaluation, treatment and institution of procedures essential to providing an appropriate response to emergency medical problems.

o. Order drugs and supplies in the office, and assist in keeping records and in the upkeep of equipment.

p. Admit patients to a hospital or health care facility.

q. Order diets, physical therapy, inhalation therapy, or other rehabilitative services as indicated by the patient's problems.

r. At the request of the peace officer, withdraw a specimen of blood from a patient for the purpose of determining the alcohol concentration or the presence of drugs.

s. Direct medical personnel, health professionals, and others involved in caring for patients and the execution of patient care.

t. Authenticate medical forms by signing the form.

u. Perform other duties appropriate to a physician assistant's practice.

v. Health care providers will consider the instructions of a physician assistant to be authoritative.

327.1(3) Emergency medicine duties.

- a. A physician assistant may be a member of the staff of an ambulance or rescue squad pursuant to Iowa Code chapter 147A.
- b. A physician assistant will document skills, training and education equivalent to that required of a certified advanced emergency medical technician or a paramedic.
- c. A physician assistant must apply for approval of advanced care training equivalency on forms supplied by the board of physician assistants.
- d. Exceptions to this subrule include:
 - (1) A physician assistant who accompanies and is responsible for a transfer patient;
 - (2) A physician assistant who serves on a basic ambulance or rescue squad service; and
 - (3) A physician assistant who renders aid within the physician assistant's skills during an emergency.

645—327.2(148C) Prohibition. No physician assistant engaged in independent practice, as defined in Iowa Code section 148C.1(5), will be permitted to measure the visual power and visual efficiency of the human eye, as distinguished from routine visual screening, except in the personal presence of a supervising physician at the place where these services are rendered.

645—327.3(147,88GA,ch1020) Identification as a physician assistant. The physician assistant will be identified as a physician assistant to patients and to the public, regardless of the physician assistant's educational degree.

645—327.4(147) Prescription requirements.

327.4(1) Each written outpatient prescription drug order issued by a physician assistant will contain the following:

- a. The date of issuance.
- b. The name and address of the patient for whom the drug is prescribed.
- c. The name, strength, and quantity of the drug, medicine, or device prescribed and directions for use.
- d. The physician assistant's name and the practice address.
- e. The signature of the physician assistant followed by the initials "PA."
- f. The Drug Enforcement Administration (DEA) number of the physician assistant if the prescription is for a controlled substance.

327.4(2) Each oral prescription drug order issued by a physician assistant will include the same information required for a written prescription, except for the written signature of the physician assistant and the physician assistant's practice address.

327.4(3) Prior to prescribing an opioid, a physician assistant will review the patient's information contained in the prescription monitoring program database, unless the patient is receiving inpatient hospice care or long-term residential facility patient care.

327.4(4) Beginning January 1, 2020, every prescription issued for a prescription drug will be transmitted electronically unless exempted pursuant to Iowa Code section 124.308 or 155A.27. Beginning January 1, 2020, a licensee who fails to comply with the electronic prescription mandate may be subject to a nondisciplinary administrative penalty of \$250 per violation, up to a maximum of \$5,000 per calendar year.

645—327.5(147) Supplying—requirements for containers, labeling, and records.

327.5(1) Containers. A prescription drug will be supplied in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. §§1471-1476 (1976), which relate to childproof closure, unless otherwise requested by the patient. The containers must also meet the requirements of Section 502G of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§301 et seq. (1976), which pertain to light resistance and moisture resistance needs of the drug supplied.

327.5(2) Labeling. A label bearing the following information will be affixed to a container in which a prescription drug is supplied:

- a. The name and practice address of the supervising physician and physician assistant.
- b. The name of the patient.
- c. The date supplied.
- d. The directions for administering the prescription drug and any cautionary statement deemed appropriate by the physician assistant.
- e. The name, strength and quantity of the prescription drug in the container.
- f. When supplying Schedule II, III, or IV controlled substances, the federal transfer warning statement must appear on the label as follows: "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

327.5(3) Samples. Prescription sample drugs will be provided without additional charge to the patient. Prescription sample drugs supplied in the original container or package will be deemed to conform to labeling and packaging requirements.

327.5(4) Records. A record of prescription drugs supplied by the physician assistant to a patient will be kept which contains the label information required by paragraphs 327.7(2) "b" to "e." Noting such information on the patient's chart or record is sufficient.

645—327.6(147,148C,272C) Standards of practice—telemedicine. This rule establishes standards of practice for the delegated provision of telemedicine services.

327.6(1) Telemedicine, generally.

a. Technological advances have made it possible for licensees in one location to provide medical care to patients in another location with or without an intervening health care provider.

b. Telemedicine is a useful tool that, if applied appropriately, can provide important benefits to patients, including increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and potential cost savings.

c. Licensees using telemedicine will be held to the same standards of care and professional ethics as licensees using traditional in-person medical care.

d. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may subject the licensee to potential discipline by the board.

327.6(2) Definitions. For the purposes of this rule:

"*Asynchronous store-and-forward transmission*" means the collection of a patient's relevant health information and the subsequent transmission of the data from an originating site to a health care provider at a distant site without the presence of the patient.

"*Board*" means the Iowa board of physician assistants.

"*In-person encounter*" means that the physician assistant and the patient are in the physical presence of each other and are in the same physical location during the physician assistant-patient encounter.

"*Licensee*" means a physician assistant licensed by the board.

"*Telemedicine*" means the practice of medicine using electronic audiovisual communications and information technologies or other means, including interactive audio with asynchronous store-and-forward transmission, between a licensee in one location and a patient in another location with or without an intervening health care provider. Telemedicine includes asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services, including teleradiology and telepathology. Telemedicine, for the purposes of this rule establishing standards of practice, does not include the provision of medical services only through an audio-only telephone, email messages, facsimile transmissions, or U.S. mail or other parcel service, or any combination thereof.

"*Telemedicine technologies*" means technologies and devices enabling secure electronic communications and information exchanges between a licensee in one location and a patient in another location with or without an intervening health care provider.

327.6(3) Practice guidelines. A licensee who uses telemedicine will utilize evidence-based telemedicine practice guidelines and standards of practice, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes. The board acknowledges that some nationally recognized medical specialty organizations have established comprehensive telemedicine practice

guidelines that address the clinical and technological aspects of telemedicine for many medical specialties.

327.6(4) *License required.* A physician assistant who uses telemedicine in the diagnosis and treatment of a patient located in Iowa will hold an active Iowa physician assistant license consistent with state and federal laws. Nothing in this rule will be construed to supersede the exceptions to licensure contained in rule 645—326.17(148C).

327.6(5) *Standards of care and professional ethics.* A licensee who uses telemedicine will be held to the same standards of care and professional ethics as a licensee using traditional in-person encounters with patients. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may be a violation of the laws and rules governing the practice of medicine and may subject the licensee to potential discipline by the board.

327.6(6) *Scope of practice.* A licensee who uses telemedicine will ensure that the services provided are consistent with the licensee's scope of practice, including the licensee's education, training, experience, ability, licensure, and certification.

327.6(7) *Identification of patient and physician assistant.* A licensee who uses telemedicine will verify the identity of the patient and ensure that the patient has the ability to verify the identity, licensure status, certification, and credentials of all health care providers who provide telemedicine services prior to the provision of care.

327.6(8) *Physician assistant-patient relationship.*

a. A licensee who uses telemedicine will establish a valid physician assistant-patient relationship with the person who receives telemedicine services. The physician assistant-patient relationship begins when:

- (1) The person with a health-related matter seeks assistance from a licensee;
- (2) The licensee agrees to undertake diagnosis and treatment of the person; and
- (3) The person agrees to be treated by the licensee whether or not there has been an in-person encounter between the physician assistant and the person.

b. A valid physician assistant-patient relationship may be established by:

- (1) In-person encounter. Through an in-person medical interview and physical examination where the standard of care would require an in-person encounter;
- (2) Consultation with another licensee. Through consultation with another licensee (or other health care provider) who has an established relationship with the patient and who agrees to participate in, or supervise, the patient's care; or
- (3) Telemedicine encounter. Through telemedicine, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telemedicine practice guidelines that address the clinical and technological aspects of telemedicine.

327.6(9) *Medical history and physical examination.* Generally, a licensee will perform an in-person medical interview and physical examination for each patient. However, the medical interview and physical examination may not be in person if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis as though the medical interview and physical examination had been performed in person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telemedicine will interview the patient to collect the relevant medical history and perform a physical examination, when medically necessary, sufficient for the diagnosis and treatment of the patient. An Internet questionnaire that is a static set of questions provided to the patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview, does not constitute an acceptable medical interview and physical examination for the provision of treatment, including issuance of prescriptions, electronically or otherwise, by a licensee.

327.6(10) *Non-physician assistant health care providers.* If a licensee who uses telemedicine relies upon or delegates the provision of telemedicine services to a non-physician assistant health care provider, the licensee will:

a. Ensure that systems are in place to ensure that the non-physician assistant health care provider is qualified and trained to provide that service within the scope of the non-physician assistant health care provider's practice;

b. Ensure that the licensee is available in person or electronically to consult with the non-physician assistant health care provider, particularly in the case of injury or an emergency.

327.6(11) *Informed consent.* A licensee who uses telemedicine will ensure that the patient provides appropriate informed consent for the medical services provided, including consent for the use of telemedicine to diagnose and treat the patient, and that such informed consent is timely documented in the patient's medical record.

327.6(12) *Coordination of care.* A licensee who uses telemedicine will, when medically appropriate, identify the medical home or treating clinician(s) for the patient, when available, where in-person services can be delivered in coordination with the telemedicine services. The licensee will provide a copy of the medical record to the patient's medical home or treating clinician(s).

327.6(13) *Follow-up care.* A licensee who uses telemedicine will have access to, or adequate knowledge of, the nature and availability of local medical resources to provide appropriate follow-up care to the patient following a telemedicine encounter.

327.6(14) *Emergency services.* A licensee who uses telemedicine will refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in the case of an emergency.

327.6(15) *Medical records.* A licensee who uses telemedicine will ensure that complete, accurate and timely medical records are maintained for the patient when appropriate, including all patient-related electronic communications, records of past care, physician assistant-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of telemedicine technologies. The licensee will note in the patient's record when telemedicine is used to provide diagnosis and treatment. The licensee will ensure that the patient or another licensee designated by the patient has timely access to all information obtained during the telemedicine encounter. The licensee will ensure that the patient receives, upon request, a summary of each telemedicine encounter in a timely manner.

327.6(16) *Privacy and security.* A licensee who uses telemedicine will ensure that all telemedicine encounters comply with the privacy and security measures of the Health Insurance Portability and Accountability Act (HIPAA) to ensure that all patient communications and records are secure and remain confidential.

a. Written protocols will be established that address the following:

- (1) Privacy;
- (2) Health care personnel who will process messages;
- (3) Hours of operation;
- (4) Types of transactions that will be permitted electronically;
- (5) Required patient information to be included in the communication, including patient name, identification number and type of transaction;
- (6) Archiving and retrieval; and
- (7) Quality oversight mechanisms.

b. The written protocols should be periodically evaluated for currency and should be maintained in an accessible and readily available manner for review. The written protocols will include sufficient privacy and security measures to ensure the confidentiality and integrity of patient-identifiable information, including password protection, encryption or other reliable authentication techniques.

327.6(17) *Technology and equipment.* Broad categories of telemedicine technologies currently exist, including asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services. While some telemedicine programs are multispecialty in nature, others are tailored to specific diseases and medical specialties. The technology and equipment utilized for telemedicine will comply with the following requirements:

a. The technology and equipment utilized in the provision of telemedicine services must comply with all relevant safety laws, rules, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic capabilities;

b. The technology and equipment utilized in the provision of telemedicine services must be of sufficient quality, size, resolution and clarity such that the licensee can safely and effectively provide the telemedicine services; and

c. The technology and equipment utilized in the provision of telemedicine services must be compliant with the HIPAA.

327.6(18) Disclosure and functionality of telemedicine services. A licensee who uses telemedicine will ensure that the following information is clearly disclosed to the patient:

a. Types of services provided;

b. Contact information for the licensee;

c. Identity, licensure, certification, credentials, and qualifications of all health care providers who are providing the telemedicine services;

d. Limitations in the drugs and services that can be provided via telemedicine;

e. Fees for services, cost-sharing responsibilities, and how payment is to be made, if these differ from an in-person encounter;

f. Financial interests, other than fees charged, in any information, products, or services provided by the licensee(s);

g. Appropriate uses and limitations of the technologies, including in emergency situations;

h. Uses of and response times for emails, electronic messages and other communications transmitted via telemedicine technologies;

i. To whom patient health information may be disclosed and for what purpose;

j. Rights of patients with respect to patient health information; and

k. Information collected and passive tracking mechanisms utilized.

327.6(19) Patient access and feedback. A licensee who uses telemedicine will ensure that the patient has easy access to a mechanism for the following purposes:

a. To access, supplement and amend patient-provided personal health information;

b. To provide feedback regarding the quality of the telemedicine services provided; and

c. To register complaints. The mechanism will include information regarding the filing of complaints with the board.

327.6(20) Financial interests. Advertising or promotion of goods or products from which the licensee receives direct remuneration, benefit or incentives (other than the fees for the medical services) is prohibited to the extent that such activities are prohibited by state or federal law. Notwithstanding such prohibition, Internet services may provide links to general health information sites to enhance education; however, the licensee should not benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites, licensees should be aware of the implied endorsement of the information, services or products offered from such sites. The maintenance of a preferred relationship with any pharmacy is prohibited. Licensees will not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from the pharmacy.

327.6(21) Circumstances where the standard of care may not require a licensee to personally interview or examine a patient. Under the following circumstances, whether or not such circumstances involve the use of telemedicine, a licensee may treat a patient who has not been personally interviewed, examined and diagnosed by the licensee:

a. Situations in which the licensee prescribes medications on a short-term basis for a new patient and has scheduled or is in the process of scheduling an appointment to personally examine the patient;

b. For institutional settings, including writing initial admission orders for a newly hospitalized patient;

c. Call situations in which a licensee is taking calls for another health care provider who has an established provider-patient relationship with the patient;

- d.* Cross-coverage situations in which a licensee is taking calls for another health care provider who has an established provider-patient relationship with the patient;
- e.* Emergency situations in which the life or health of the patient is in imminent danger;
- f.* Emergency situations that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
- g.* Situations in which the licensee has diagnosed a sexually transmitted disease in a patient and the licensee prescribes or dispenses antibiotics to the patient's named sexual partner(s) for the treatment of the sexually transmitted disease as recommended by the U.S. Centers for Disease Control and Prevention; and
- h.* For licensed or certified nursing facilities, residential care facilities, intermediate care facilities, assisted living facilities, hospice settings, and correctional facilities.

327.6(22) *Prescribing based solely on an Internet request, Internet questionnaire or a telephonic evaluation—prohibited.* Prescribing to a patient based solely on an Internet request or Internet questionnaire (i.e., a static questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview) is prohibited. Absent a valid physician assistant-patient relationship, a licensee's prescribing to a patient based solely on a telephonic evaluation is prohibited, with the exception of the circumstances described in subrule 327.9(21).

These rules are intended to implement Iowa Code sections 147.10 and 147.107 and chapters 148C and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 328
“Continuing Education for Physician Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 148C.3, 148C.5, 272C.3 and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148C and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
1:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing (DIAL) and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for physician assistants. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rulemaking, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that physician assistants maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no direct costs to the public. There is a direct cost to the licensee, who must pay for the continuing education required. Through membership, the National Commission on Certification for

Physician Assistants (NCCPA) offers continuing education to licensees for \$180 over every two-year cycle. Licensees can obtain continuing education through other providers. Costs for continuing education can range anywhere from \$180 to \$400 based on the course. Some employers will absorb the cost of licensees' continuing education.

Costs to the agency are for the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.34 full-time equivalent (FTE) position, which includes answering questions from the public and licensees related to practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that physician assistants maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offers these courses. Through membership, the NCCPA offers continuing medical education (CME) to licensees for \$180 over every two-year cycle. Licensees can obtain CME through other providers. Costs for continuing education can range anywhere from \$180 to \$400 based on the course. Some employers will absorb the cost of licensees' continuing education.

Currently, Iowa requires 100 hours of continuing education for these license types every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.34 FTE position, which includes answering questions from the public and licensees related to practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. This rule has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce or eliminate the cost to the licensee to meet this requirement. This would also mean a loss of revenue for the private industry organizations that offer continuing education programs.

Staff will hold conversations with Board members to inquire if the Board would recommend lowering the continuing education requirements.

The Board historically believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce the amount of continuing education required. Iowa requires 100 hours of continuing education every two years, of which 50 are to be designated as Category I by the American Academy of Physician Assistants, the American Medical Association, the American Osteopathic Association Council on Continuing Medical Education, the American Academy of Family Physicians or other organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME). The remaining 50 hours can be designated either Category I or Category II credit as accepted by the NCCPA. Licensees who have prescribed opioids to a patient during the renewal cycle are required to complete a minimum of two hours of CME on guidelines for prescribing opioids.

For physician assistants who want to maintain NCCPA certification, the ten-year certification maintenance process includes five two-year cycles during which all certified physician assistants must log 100 hours of continuing education credit online with the submission of a \$180 certification maintenance fee paid every two years.

A review of surrounding states indicates the following continuing education requirements:

- o Kansas: 50 hours of CME annually; 20 hours must be Category I and 30 hours can be Category II.
- o Nebraska: 50 hours of Category I CME hours every two years, or meet certification standards through the NCCPA.
- o Minnesota: 50 contact hours of Category I CME every two years, or meet certification standards through the NCCPA.
- o South Dakota: 30 hours of CME annually, or meet certification standards through the NCCPA.
- o Wisconsin: 100 hours of CME every two years and pass recertification examinations every ten years to maintain NCCPA certification.
- o Illinois: 100 hours of CME every two years and pass recertification every ten years to maintain NCCPA certification.

Staff will hold a conversation with Board members to inquire if the Board would recommend lowering the continuing education requirements.

The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Less restrictive alternatives would be to reduce the amount of continuing education required. A review of surrounding states has shown that other states do successfully manage continuing education programs with fewer hours required per renewal cycle.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board will discuss less restrictive alternatives at its next board meeting, such as reducing the number of continuing education hours. The Board has historically believed that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for physician assistants. While some physician assistants may practice or partner in a small practice, some also work for large corporations and hospitals. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 328 and adopt the following new chapter in lieu thereof:

CHAPTER 328
CONTINUING EDUCATION FOR PHYSICIAN ASSISTANTS

645—328.1(148C) Definitions. For the purpose of these rules, the following definitions will apply:

“*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.

“*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 physician assistants.

“*Continuing education*” means planned, organized learning acts 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.

“*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 as a physician assistant in the state of Iowa.

645—328.2(148C) Continuing education requirements.

328.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on October 1 of each year and ending on September 30 two years later. Each biennium, each licensee will be required to complete a minimum of 100 hours of continuing education approved by the board.

328.2(2) Requirements of new licensees. Those persons licensed for the first time will not be required to complete continuing education as a prerequisite for the first renewal of their licenses. The new licensee will be required to complete a minimum of 100 hours of continuing education per biennium for each subsequent license renewal.

328.2(3) A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

645—328.3(148C,272C) Standards.

328.3(1) *General criteria.* A continuing education activity is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides an individual certificate of completion or evidence of successful completion of the course provided by the course sponsor. This documentation must contain the course title, date(s), contact hours, sponsor and licensee's name.

328.3(2) *Specific criteria.* Continuing education requirements are as follows:

a. The licensee will complete a minimum of 50 hours of credit designated as Category I by the American Academy of Physician Assistants, the American Medical Association, the American Osteopathic Association Council on Continuing Medical Education, the American Academy of Family Physicians or other organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME).

b. For the remaining 50 hours of required continuing medical education (CME), Category I or Category II credit, as accepted by the National Commission on Certification for Physician Assistants (NCCPA), will satisfy the CME requirements. In case of audit, licensees will provide evidence of NCCPA certification during the time period being audited or an activity log for all Category II credits for which a certificate of completion is not available. The activity log will list for each activity the date and type of activity and number of hours claimed per activity.

c. Licensees who maintain certification by the National Commission on Certification for Physician Assistants (NCCPA) may show proof of meeting the board's CME requirements by providing proof of current certification by the NCCPA for the time period being reviewed or audited.

d. A licensee who has prescribed opioids to a patient during the renewal cycle will complete a minimum of two hours of continuing education regarding the guidelines for prescribing opioids for chronic pain, as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, as a condition of license renewal. These hours may count toward the 100 hours of continuing education required for license renewal. The licensee will maintain documentation of these hours, which may be subject to audit.

These rules are intended to implement Iowa Code section 272C.2 and chapter 148C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 329
“Discipline for Physician Assistants”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 148C.3, 148C.5, 272C.3 and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 148C and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
1:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Or dial: 402.921.2210
PIN: 301 728 068#

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Susan Reynolds
Bureau of Board Support
Phone: 515.281.5234
Email: susan.reynolds@idph.iowa.gov

Purpose and Summary

This proposed rulemaking provides protection to Iowans because it publicly defines professional standards for physician assistants. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, licensees can be subject to discipline against their license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Physician Assistants has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to physician assistants and are excluded from the general disciplinary chapter. The grounds for discipline related to opioid prescribing are required by Iowa Code section 147.162.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, minimum professional standards of practice are associated with costs to the licensed professional. The licensee is responsible for obtaining the necessary prerequisite training to obtain and maintain these minimum practice standards. The costs of this are the responsibility of the licensee. The Board is unable to assess a specific cost related to these requirements.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$10,000 per public order.

Costs to the agency are for the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.34 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees related to practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rulemaking is to ensure public safety and maintain a high level of care for Iowans. In 2022, the Board opened 14 complaints involving the standard of care. This profession requires a high-skill level of competency and practice standards. This rulemaking creates a process for holding accountable those licensees who fail to meet the minimum standards articulated in rule and statute. This profession is regulated across all states.

While a low number of complaints can call into question the extent to which a profession needs to be regulated, physician assistants are practicing medicine, which requires skill and precision to protect patient safety, so the Board believes that regulation is necessary.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs of this rulemaking are extremely low. The Board believes that the benefits achieved justify the low cost because the physician assistants are practicing medicine, which requires skill and precision to protect patient safety.

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public and leaving the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at

approximately 0.34 FTE position. This includes responding to questions from the public and licensees regarding items such as practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$0 was paid into the General Fund from disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are only a small number of complaints submitted, costs of this rulemaking are extremely low. The Board believes that the benefits achieved justify the low cost because the physician assistants are practicing medicine, which requires skill and precision to protect patient safety. The Board receives a low number of complaints and issues a small number of disciplinary orders. In 2022, the Board opened 14 complaints involving the standard of care. This profession requires a high-skill level of competency and practice standards. This rulemaking creates a process for holding accountable those licensees who fail to meet the minimum standards articulated in rule and statute. This profession is regulated across all states. While a low number of complaints can call into question the extent to which a profession needs to be regulated, physician assistants are practicing medicine, which requires skill and precision to protect patient safety, so the Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive care from competent and safe practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to physician assistants and are excluded from the general disciplinary chapter. The grounds for discipline related to opioid prescribing in this rulemaking are required by Iowa Code section 147.162.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to physician assistants and are excluded from the general disciplinary chapter. The grounds for discipline related to opioid prescribing in this rulemaking are required by Iowa Code section 147.162.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of practice standards for physician assistants. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 329 and adopt the following new chapter in lieu thereof:

CHAPTER 329
DISCIPLINE FOR PHYSICIAN ASSISTANTS

645—329.1(148C) Definitions.

“*Board*” means the board of physician assistants.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice as a physician assistant in Iowa.

645—329.2(147,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

329.2(1) Professional incompetency. Professional 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 physician assistants in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care which is ordinarily exercised by the average physician assistant acting in the same or similar circumstances.
- d. Failure to conform to the minimal standard of acceptable and prevailing practice of a physician assistant in this state.
- e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.
- f. Being adjudged mentally incompetent by a court of competent jurisdiction.

329.2(2) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

329.2(3) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

329.2(4) Representing oneself as a physician assistant when one's license has been suspended or revoked, or when one's license is on inactive status, except as provided by rule 645—326.15(148C,88GA,ch1020).

329.2(5) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

329.2(6) The performance of a medical function without approved supervision, if supervision is required pursuant to rules 645—326.7(148C) and 645—326.8(148C), except in cases requiring performance of evaluation and treatment procedures essential to providing an appropriate response to an emergency situation.

329.2(7) Prescribing opioids in dosage amounts that exceed what would be prescribed by a reasonably prudent licensee.

These rules are intended to implement Iowa Code chapters 147, 148C and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 351
“Licensure of Athletic Trainers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 152D, 272C.3, 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 152D, 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:50 to 3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing (DIAL) and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 351 sets the minimum standards of entry into the athletic training profession. Iowa residents, licensees, and employers benefit from the rulemaking because it clarifies the processes by which licensees may apply for licensure as athletic trainers, as directed in statute. The chapter describes the process that will be used to license athletic trainers and athletic trainer assistants, including renewal and reinstatement, to ensure public safety through review of the integrity and competence of the practitioner. The rulemaking describes the application process, educational qualifications, and examination requirements. The rulemaking also provides steps for documentation of physician direction and athletic training plans for direct service.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. Licensees have costs related to educational requirements to obtain a baccalaureate degree. The license fee for a two-year license to practice to become an Iowa licensed athletic trainer is \$120 (license fees are specifically addressed in rule 645—5.1(147,152D)). Licensees must also pay an examination fee of \$375 to the Board of Certification for the Athletic Trainer (BOC).

These costs are comparable to surrounding states' licensing fees. Nebraska's license fee is \$117; licensees pay the BOC exam fee of \$375. Minnesota has a license fee of \$183.25 (includes a criminal background check fee); licensees pay the BOC exam fee of \$375.

- Classes of persons that will benefit from the proposed rulemaking:

The benefits achieved justify the costs. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board of Athletic Training believes the benefits achieved justify the cost to license this profession because licensure ensures that Iowans are treated by competent and qualified practitioners with knowledge of topics pertinent to the profession to ensure the safety and welfare of the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide training for athletic trainers. Additional private industries and educational institutions provide examinations and materials for preparation for the exam. Licensing renewal fees are \$120 every two years.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities. This includes reviews at the time of initial application and during reinstatement. Compliance audits are performed randomly on renewed licenses. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensure by consent agreements and discipline imposed by the Board are monitored by office staff. Where appropriate, referrals are made to the impaired practitioner program. An executive officer, licensure specialist and investigator support the full scope of this work at 0.04 full-time equivalent (FTE) position. This additionally includes answering questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees, not the State. There is no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes all current requirements ensure public safety and ensure minimum competency. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. The

cost of inaction would increase the potential for injury to the public that would remain unchecked without review prior to initial licensure, periodic compliance audits and complaint investigation. In addition, the rulemaking provides consistency related to the licensure of athletic trainers in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the rulemaking attempts to provide consistency related to the licensure of athletic trainers across the United States, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of the DIAL. DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking attempts to provide consistency related to the licensure of athletic trainers across the United States, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the current internal process utilized for licensure review, compliance audits and complaint investigation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario.

In addition, the rulemaking attempts to provide consistency related to the licensure of athletic trainers across the United States, which makes obtaining licensure in multiple states simpler for applicants.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for athletic trainers. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 351 and adopt the following **new** chapter in lieu thereof:

ATHLETIC TRAINERS

CHAPTER 351 LICENSURE OF ATHLETIC TRAINERS
CHAPTER 352 CONTINUING EDUCATION FOR ATHLETIC TRAINERS
CHAPTER 353 DISCIPLINE FOR ATHLETIC TRAINERS

CHAPTER 351
LICENSURE OF ATHLETIC TRAINERS

645—351.1(152D) Definitions. In addition to the definitions included in Iowa Code section 152D.1, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of athletic training created under Iowa Code chapter 147.

“*BOC*” means the Board of Certification or its successor organization.

“*Directing physician*” means a physician who supervises the athletic training services provided by a licensed athletic trainer.

“*Direction*” means that a physician directs the performance of a licensed athletic trainer in the development, implementation, and evaluation of an athletic training service plan as set out in 645—351.6(152D). Direction shall not be construed as requiring the personal presence of that physician at each activity of the licensed athletic trainer. It is the responsibility of the licensed athletic trainer to ensure that the practice of athletic training is carried out only under the direction of a licensed physician.

“*Endorsement*” means the issuance of an Iowa license to practice athletic training to an applicant who is currently licensed in another state who has the same or similar qualifications to those required in Iowa.

“*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.

“*Licensee*” means any person licensed to practice as an athletic trainer in the state of Iowa.

“*License expiration date*” means February 28 of each odd-numbered year.

“*Mandatory reporter training*” means the training on identifying and reporting child abuse or dependent adult abuse as required in Iowa Code sections 323.69 and 235B.16.

“*Physical reconditioning*” means the part of the practice of athletic training that combines physical treatment, rehabilitation and exercise and is carried out under the orders of a physician or physician assistant. Physical treatment is part of a service plan that includes but is not limited to the continued use of any of the following: cryotherapy, thermotherapy, hydrotherapy, electrotherapy, or the use of mechanical devices.

“*Physician*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, or podiatry under the laws of this state.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—351.15(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in 645—11.31(272C). Once the license is reinstated, the licensee may apply for active status.

645—351.2(152D) Initial licensure.

351.2(1) Requirements for licensure. The applicant shall:

a. Submit a complete online application and pay the nonrefundable fee specified in rule 645—5.1(147,152D). If the application is not completed according to the instructions, the application will not be reviewed by the board.

b. Submit official copies of academic transcripts directly from the school to the board of athletic training. No application will be considered by the board until official copies of academic transcripts have been received.

c. Have successfully completed the BOC examination. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the Iowa board of athletic training.

d. Provide verification of license from the jurisdiction in which the applicant has been most recently licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction.

351.2(2) Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

a. Licensee’s name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary actions taken against the license.

351.2(3) Licensure by endorsement. An athletic trainer applicant who holds a license from the District of Columbia or another state, territory, province or foreign country may be eligible for licensure by endorsement and may direct the BOC to submit:

a. A current certification status, or

b. A passing score on the examination of the BOCs.

351.2(4) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

351.2(5) Incomplete applications that have been on file in the board office for more than two years shall be:

a. Considered invalid and shall be destroyed; or

b. Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

645—351.3(152D) Educational qualifications.

351.3(1) An applicant for licensure to practice as an athletic trainer shall possess a baccalaureate degree or postbaccalaureate degree from a U.S. regionally accredited college or university.

351.3(2) Foreign-trained athletic trainers shall:

a. Provide an equivalency evaluation of their educational credentials by International Educational Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone 310.258.9451; website www.ierf.org or email at info@ierf.org. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation. An applicant who has passed the BOC examination is exempt from this requirement.

b. Provide a copy of the certificate or diploma awarded to the applicant from an athletic training program in the country in which the applicant was educated. An applicant who has passed the BOC examination is exempt from this requirement.

c. Receive a final determination from the board regarding the application for licensure.

d. Pass the BOC examination. Official results are to be submitted directly to the board from the BOC.

351.3(3) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

645—351.4(152D) Examination requirements.

351.4(1) The examination required by the board shall be the BOC examination. Application and information may be obtained from the BOC Offices, 1415 Harney Street, Suite 200, Omaha, NE 68102; telephone 402.559.0091; website www.bocatc.org or email at BOC@bocatc.org.

351.4(2) The applicant has responsibility for:

- a. Making arrangements to take the national examination; and
- b. Arranging to have the examination scores sent directly to the board from BOC.

645—351.5(152D) Documentation of physician direction. Each licensee must maintain documentation of physician direction. It is the responsibility of the licensee to ensure that documentation of physician direction is obtained and maintained, including the following:

1. Athletic training service plan as set out in 645—351.6(152D);
2. Dates and names of physician and physician assistant orders or referrals;
3. Initial evaluations and assessments;
4. Treatments and services rendered, with dates; and
5. Dates of subsequent follow-up care.

645—351.6(152D) Athletic training standards of professional practice. Athletic training service plans shall be composed of the following components as taken from the Board of Certification Standards of Professional Practice (January 2018):

351.6(1) Practice Standards.

351.6(2) Code of Professional Responsibility.

645—351.7(147) License renewal.

351.7(1) The biennial license renewal period for a license to practice athletic training shall begin on March 1 of each odd-numbered year and end on February 28 of the next odd-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

351.7(2) 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.

351.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—352.2(152D) and the mandatory reporting requirements of subrule 351.9(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.

351.7(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 training in child abuse identification and reporting as required by Iowa Code section 232.69(3) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. The course(s) shall be the curriculum provided by the Iowa department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs “*a*” to “*c*,” including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “*a*” to “*e*.”

351.7(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

351.7(6) A person licensed to practice as an athletic trainer shall keep the license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

351.7(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

351.7(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as an athletic trainer in Iowa until the license is reactivated. A licensee who practices as an athletic trainer in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—351.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

351.8(1) Submit a reactivation application on a form provided by the board.

351.8(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

351.8(3) Provide verification of current competence to practice as an athletic trainer by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:

1. Licensee’s name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 50 hours of continuing education within two years of the application for reactivation or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly

from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
 2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license; and
- (2) Verification of completion of 50 hours of continuing education within two years of application for reactivation; and
- (3) Verification of current BOC certification.

351.8(4) Submit a sworn statement of previous practice from an employer or professional associate, detailing places and dates of employment and verifying that the applicant worked as an athletic trainer for at least 2,080 hours or taught as the equivalent of a full-time faculty member for at least one of the immediately preceding years during the last two-year time period.

645—351.9(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—351.15(17A,147,272C) prior to practicing as an athletic trainer in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 352
“Continuing Education for Athletic Trainers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 152D, 272C.3, 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 152D, 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:50 to 3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 352 sets forth continuing education requirements for athletic trainers in Iowa and includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of this chapter is to provide the licensees, schools, continuing education providers, and employers clarity regarding the processes licensees must complete for renewal or reactivation of licensure. The intended benefit of continuing education is to ensure that athletic trainers maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Iowa requires 50 hours of continuing education every two years. Private industry offers these courses, so the Board of Athletic Training is not privy to exact costs.

The cost to obtain continuing education is quite variable depending on the focus of the practitioner and may range anywhere from free to more than \$50 per hour. Typically, conferences charge approximately \$10 to \$15 per hour per continuing education unit (CEU).

While some state licensing boards require licensees to maintain Board of Certification (BOC) certification as a condition of licensure, Iowa does not require continued membership after initial licensure. This certification requires 50 CEU hours every two years. Recertification is \$39 for National Athletic Trainers' Association (NATA) members and \$55 for non-members.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that athletic trainer licensees meet specific continuing education requirements to ensure up-to-date knowledge on practical service-related skills and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry offers these courses, so the Board is not privy to exact costs but, based on research, estimates the cost to obtain continuing education is quite variable depending on the focus of the practitioner and may range anywhere from free to more than \$50 per hour. Typically, conferences charge approximately \$10 to \$15 per hour per CEU.

While some state licensing boards require licensees to maintain BOC certification as a condition of licensure, Iowa does not require continued membership after initial licensure. This certification requires 50 CEU hours every two years. Recertification is \$39 for NATA members and \$55 for non-members.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standard of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities at approximately 0.04 full-time equivalent (FTE) position, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. This includes answering questions from the public and licensees about practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board does not recommend a change in continuing education hours at this time. Iowa's continuing education requirements are in line with neighboring states and the BOC certification. Iowa's 50-hour continuing education requirement is consistent with or less than a number of neighboring states including Missouri, South Dakota, and Minnesota.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce the amount of continuing education required. The Board does not recommend a change in continuing education hours at this time. Iowa's continuing education requirements are in line with neighboring states and the BOC certification. Iowa's 50-hour continuing education requirement is consistent with or less than a number of neighboring states including Missouri, South Dakota, and Minnesota.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring whether the Board would recommend lowering the continuing education requirements. The Board does not recommend a change in continuing education hours at this time.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 352 and adopt the following **new** chapter in lieu thereof:

CHAPTER 352
CONTINUING EDUCATION FOR ATHLETIC TRAINERS

645—352.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

“*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 athletic training created under Iowa Code chapter 147.

“*BOC*” means the Board of Certification or its successor organization.

“*Continuing education*” means the same as defined in Iowa Code section 272C.1.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as an athletic trainer in the state of Iowa.

645—352.2(152D) Continuing education requirements.

352.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on March 1 of each odd-numbered year and ending on February 28 of the next odd-numbered year. Each biennium, each person who is licensed to practice as an athletic trainer in this state will have the responsibility to finance the cost and be required to complete a minimum of 50 hours of continuing education approved by the board.

352.2(2) Requirements for new licensees. Those persons licensed for the first time or being licensed for the first time after a temporary license 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 50 hours of continuing education per biennium for each subsequent license renewal.

352.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

352.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

645—352.3(152D,272C) Standards.

352.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program.

At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

352.3(2) Specific criteria. Continuing education may be obtained through any of the following:

- a. Completing a course provided by a BOC-approved provider of continuing education.
 - b. Attending workshops, conferences, or symposiums.
 - c. Authoring research, the results of which are published in a recognized professional publication.
- A licensee shall receive five hours of credit per page.

d. Presenting professional programs that meet the criteria of this chapter. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. Presenting at a professional program does not include teaching class at an institution of higher learning at which the applicant is regularly and primarily employed, nor does it include presentations to the lay public. A licensee may be granted no more than ten hours of continuing education credit per biennium for presenting professional programs.

e. Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of athletic training must be maintained for audit. Continuing education credit equivalents are as follows:

- 1 academic semester hour = 15 continuing education hours
- 1 academic trimester hour = 12 continuing education hours
- 1 academic quarter hour = 10 continuing education hours

645—352.4(152D,272C) Audit of continuing education report. In addition to the requirements of 645—4.11(272C), proof of current BOC certification shall be accepted in lieu of individual certificates of completion for an audit.

These rules are intended to implement Iowa Code section 272C.2 and chapter 152D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 353
“Discipline for Athletic Trainers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 152D, 272C.3 and 272C.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 152D and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
2:50 to 3:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/bfq-qaeb-nwu
More phone numbers:
tel.meet/bfq-qaeb-nwu?pin=7324359836726

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person’s comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Inspections, Appeals, and Licensing and advise of specific needs.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Venus Vendoures Walsh
400 S.W. 8th Street
Des Moines, Iowa 50309
Phone: 515.242.6529
Email: venus.vendoures-walsh@iowa.gov

Purpose and Summary

Proposed Chapter 353 defines actions that are inconsistent with professional standards for licensees, which are established to protect the consumer and colleagues. Actions inconsistent with professional standards could result in disciplinary actions against a practitioner’s license.

The 19 boards in the legacy Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the athletic training licensees and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are associated with costs to the licensed professional. Licensees may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fine amounts are not established in rule for these licensees and are determined by the Board of Athletic Training. The Board has statutory authority to impose a civil penalty on individuals practicing without a license.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking because there is clarity on compliance and potential consequences for noncompliance. The benefit is being achieved since the Board only had five founded violations between 2010 and 2023. The low number of public discipline cases demonstrates the effectiveness of the continuing education requirements in ensuring licensees are remaining current in their professional knowledge and providing quality care to Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes the benefits achieved justify the costs because the cost of inaction would increase the potential for injury to the public, by allowing licensed providers to continue providing services without correction, education, or any form of discipline. Fees incurred by the professional can be up to \$1,000 per violation.

The Board has not identified a more cost-effective alternative to the current discipline process. There could be a consideration of reducing or eliminating grounds for discipline, but the Board believes these requirements are important in order to protect the public from infection risks.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee takes action that is grounds for discipline. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer, licensure specialist and investigator support the full scope of this work at 0.04 full-time equivalent (FTE) position. This additionally includes answering questions from the public and licensees on items such as practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees, not the State. There is no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The amount of complaints received is relatively low, and costs reflect that. The Board believes the costs are justified because inaction could increase the potential for injury to the public by allowing licensed providers to continue providing services without correction, education, or any form of discipline. The costs to review and address the standards of professional behavior are justified by the benefit of protecting the public.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

The Iowa Boards and Commissions Review Committee recommended consolidating the Board of Athletic Training with Chiropractic, Massage Therapy, and Physical and Occupational Therapy.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

While there has been some standardization of consideration of criminal convictions, the Board has not recommended a less restrictive alternative to public protection.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the athletic training licensees and are therefore excluded from the general disciplinary chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 353 and adopt the following **new** chapter in lieu thereof:

CHAPTER 353 DISCIPLINE FOR ATHLETIC TRAINERS

645—353.1(152D) Definitions.

“Board” means the board of athletic training.

“Discipline” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice pursuant to Iowa Code chapter 152D and 645—Chapters 351 to 353 as an athletic trainer in Iowa.

645—353.2(152D,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that any of the following acts or offenses listed in such chapter or in Iowa Code section 147.55 have occurred:

353.2(1) Professional incompetency. Professional 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 athletic trainers in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average athletic trainer acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensed athletic trainer in this state.

353.2(2) Violation of a regulation, rule or law of this state, another state, or the United States, which relates to the practice of athletic training.

353.2(3) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual’s practice of athletic training in another state, district, territory or country.

353.2(4) Knowingly aiding, assisting, or advising a person to unlawfully practice as an athletic trainer.

353.2(5) Representing oneself as a licensed athletic trainer when one’s license has been suspended or revoked, or when one’s license is on inactive status.

These rules are intended to implement Iowa Code chapters 147, 152D and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 361
“Licensure of Sign Language Interpreters and Transliterators”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154E.3, 147.36, 272C.3, 272C.4, and 272C.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154E, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules set minimum standards for entry into the sign language interpreter and transliterator profession. Iowa residents, licensees and employers benefit from the rules as they articulate the processes by which individuals apply for licensure as a sign language interpreter or transliterator in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant because complying with the minimum requirements to enter into the professions are at the expense of the licensee.

There are no educational requirements to become an Iowa sign language interpreter or transliterator, but applicants must pay applicable fees and pass an examination in order to obtain a license. The examination fees are approximately \$250 to \$500, depending on the type of examination.

The application fee is \$120, and the renewal fee is \$120.

These costs are comparable to, or less than, surrounding states. Nebraska requires a high school or college diploma. In Nebraska, applicants must pay \$250 to \$500 for the examination and an application fee of \$150. Minnesota requires an interpreter training program for its educational interpreters. In addition, applicants must complete an examination for \$250 to \$500 and pay an application fee.

Department staff review applications for initial and renewal licenses, and for licensure reinstatement. Department staff also answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board of Sign Language Interpreters and Transliterators (Board) are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.35 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rules. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the cost to license this profession is justified by the benefits achieved because licensure ensures that Iowans are treated with competent and qualified practitioners.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The costs for examination required are \$250 to \$500, depending on which examination the applicant takes. Licensing fees are \$120 for an initial license and \$120 for each renewal period.

- Qualitative description of impact:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public. The Board believes the cost to license this profession is justified by the benefits achieved because licensure ensures that Iowans are treated with competent and qualified practitioners. Licensing requirements in Iowa are very similar to those in surrounding states.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals, reactivations and reinstatements. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.35 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing these proposed rules are paid by individual licensees, not the State. There is no anticipated impact from these rules on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Licensing is the highest form of regulation. Lower forms of regulation could be viable, such as registration. As of 2022, there are 22 states that do not license sign language interpreters, although some have other regulations. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide

consistency related to the licensure of sign language interpreters and transliterators in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in the state of Iowa are similar to those of surrounding states that license interpreters and transliterators.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of sign language interpreters and transliterators. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of sign language interpreters or transliterators in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this board is now part of DIAL. DIAL—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rules support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a more cost-effective alternative to the licensure of sign language interpreters or transliterators. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, these proposed rules provide consistency related to the licensure of sign language interpreters or transliterators in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of sign language interpreters and transliterators. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of sign language interpreters and transliterators in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this board is now part of DIAL. DIAL—Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rules support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

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- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. These rules are meant to ensure public safety in terms of licensing requirements for sign language interpreters and transliterators. While some interpreters are running a small business of their own, some also work for larger businesses or school systems. To exempt a small business from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 361 and adopt the following **new** chapter in lieu thereof:

SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

| | |
|-------------|---|
| CHAPTER 361 | LICENSURE OF SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS |
| CHAPTER 362 | CONTINUING EDUCATION FOR SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS |
| CHAPTER 363 | DISCIPLINE FOR SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS |

CHAPTER 361

LICENSURE OF SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

645—361.1(154E) Definitions. For purposes of these rules, the following definitions will apply:

“Active interpreter or transliterator services” means the actual time spent personally providing interpreting or transliterating services or providing interpreting or transliterating services through videoconferencing or remotely. When in a team interpreting situation, the time spent monitoring while the team interpreter is actively interpreting will not be included in the time spent personally providing interpreting or transliterating services.

“Active license” means a license that is current and has not expired.

“Board” means the board of sign language interpreters and transliterators.

“Direct supervision of a temporary license holder” means monitoring of interpreting or transliterating services while personally observing the temporary license holder providing those services, as outlined in paragraphs 361.3(4) “b” and “c.”

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period.

“Licensee” means any person licensed to practice as a sign language interpreter or transliterator in the state of Iowa.

“Licensure by endorsement” means the issuance of an Iowa license to practice as a sign language interpreter or transliterator to an applicant who is or has been licensed in another state.

“Reactivate” or *“reactivation”* means the process as outlined in rule 645—361.9(17A,147,272C) by which an inactive license is restored to active status.

“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.

“Supervisor” means a sign language interpreter or transliterator licensed pursuant to Iowa Code section 154E.3 and subrule 361.2(1) who provides on-site evaluations and advisory sessions with a

temporary license holder for the purpose of the professional development of that temporary license holder.

645—361.2(154E) Requirements for licensure.

361.2(1) The following criteria will apply to licensure:

a. Applicants will submit a completed online licensure application and pay the nonrefundable fee; and

b. Applicants will provide proof of one of the following:

(1) Passes the National Association of the Deaf/Registry of Interpreters for the Deaf (NAD/RID) National Interpreter Certification (NIC) examination after November 30, 2011; or

(2) Passes one of the following examinations administered by the Registry of Interpreters for the Deaf (RID):

1. Oral Transliteration Certificate (OTC); or

2. Certified Deaf Interpreter (CDI); or

(3) Passes the Educational Interpreter Performance Assessment (EIPA) with a score of 3.5 or above after December 31, 1999; or

(4) Passes the Cued Language Transliterator National Certification Examination (CLTNCE) administered by The National Certifying Body for Cued Language Transl iterators; or

(5) Currently holds one of the following NAD/RID certifications awarded through November 30, 2011, by the National Council on Interpreting (NCI):

1. National Interpreter Certification (NIC); or

2. National Interpreter Certification Advanced (NIC Advanced); or

3. National Interpreter Certification Master (NIC Master); or

(6) Currently holds one of the following certifications previously awarded by the RID:

1. Certificate of Interpretation (CI); or

2. Certificate of Transliteration (CT); or

3. Certificate of Interpretation and Certificate of Transliteration (CI and CT); or

4. Interpretation Certificate/Transliteration Certificate (IC/TC); or

5. Comprehensive Skills Certificate (CSC); or

(7) Currently holds one of the following certifications previously awarded by the National Association of the Deaf (NAD):

1. NAD III (Generalist); or

2. NAD IV (Advanced); or

3. NAD V (Master); or

(8) Currently holds an advanced or master certification awarded by the Board for Evaluation of Interpreters (BEI).

361.2(2) Licensees who were issued their licenses within six months prior to the renewal will not be required to renew their licenses until the renewal cycle two years later.

a. An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

b. An applicant who has been licensed in another state will provide verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license.

645—361.3(154E) Requirements for temporary license.

361.3(1) An applicant who has not successfully completed one of the board-approved examinations or does not hold an approved certification set forth in paragraph 361.2(1) “d” will provide verification the applicant has passed one of the following:

- a. The written portion of the Registry of Interpreters for the Deaf (RID) examination;
- b. The written portion of the Board for Evaluation of Interpreters (BEI) examination;
- c. The written portion of the Educational Interpreter Performance Assessment (EIPA) examination;
- d. The EIPA prehire examination at the highest recommended level;
- e. The EIPA performance test;
- f. An associate degree or higher from a formal interpreter training program (ITP) with a regionally accredited college or university;
- g. The American Sign Language Proficiency Interview (ASLPI) at the 2+ level or higher; or
- h. The Sign Language Proficiency Interview (SLPI) at the intermediate level or higher.

361.3(2) Submit a written supervisory agreement that complies with the requirements stated in subrule 361.3(4). The temporary license will be valid for two years from the initial issue date and may be renewed once for the immediately following two-year period.

361.3(3) A temporary license holder is only authorized to practice if the following direct supervision requirements are fulfilled:

a. Enter into a written agreement with a supervisor in which the temporary license holder and the supervisor agree to the minimum requirements provided in paragraphs 361.3(4) “b” and “c.” The supervisor will possess a full, unrestricted sign language interpreter and transliterator license. The agreement will be signed and dated by the temporary license holder and the supervisor; will include the temporary license holder’s and supervisor’s names, addresses and contact information; and will be provided to the board with the application for a temporary license.

b. Have a supervisor observe the temporary license holder in active practice for no fewer than six bimonthly observation sessions per year for at least 30 minutes each, if the temporary license holder is working alone, or at least 60 minutes each, if the temporary license holder is working in a team interpreting situation.

c. Attend at least six bimonthly advisory sessions with the supervisor per year for the purpose of discussing the supervisor’s suggestions for the temporary license holder’s professional skill development based on the observation sessions.

d. Maintain an event log documenting the date, time, length and setting of each observation session and advisory session. This event log will be submitted with the temporary license holder’s renewal application.

e. Ensure that the supervisor attends each of the observation sessions and advisory sessions or reschedules the sessions as necessary to ensure compliance.

f. If the replacement of a supervisor becomes necessary, the temporary license holder will develop a new written agreement with the new supervisor.

g. Obtain permission from clients as necessary to allow the supervisor to be in attendance during the observation sessions.

361.3(4) As an Iowa-licensed practitioner in accordance with this chapter, a supervisor providing direct supervision of a temporary license holder as provided in subrule 361.3(4) is obligated to report to the board an interpreter or transliterator temporary license holder who is not complying with direct supervision requirements or who is not practicing in compliance with Iowa law and rules including, but not limited to, Iowa Code chapter 154E and 645—Chapters 361 through 363.

645—361.4(154E) Licensure by endorsement.

361.4(1) An applicant who has been a licensed sign language interpreter or transliterator under the laws of another jurisdiction will 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:

- a. Meets the requirements of rule 645—361.2(154E);

- b.* Shows evidence of licensure requirements that are similar to those required in Iowa; and
- c.* Provides an equivalency evaluation of foreign educational credentials sent directly from the equivalency service to the board.

361.4(2) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—361.5(154E) License renewal.

361.5(1) The biennial license renewal period for a license to practice as a sign language interpreter or transliterator will begin on July 1 of an odd-numbered year and end on June 30 of the next odd-numbered year. The licensee is responsible for renewing the license prior to its expiration.

361.5(2) 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 date two years later.

361.5(3) A licensee applying for renewal will:

a. Meet the continuing education requirements as provided in 645—subrules 362.2(1) and 362.2(2) or, in lieu of meeting such requirements, provide proof of a current national interpreter certification issued by an organization recognized by the board (e.g., Registry of Interpreters for the Deaf (RID); National Association of the Deaf (NAD); NAD-RID National Interpreter Certification (NIC)) as evidence of meeting continuing education requirements. A licensee whose license was reactivated during the current biennial license 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, and attach verification of completion of continuing education hours on the website before the license expiration date.

361.5(4) A two-year license will be issued after the requirements of the rule are met. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

361.5(5) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

361.5(6) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.18(4). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

361.5(7) Inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice until the license is reactivated.

645—361.6(17A,147,272C) License reactivation.

361.6(1) Submit a completed online reactivation application and pay the nonrefundable fee.

361.6(2) If licensed in another jurisdiction, submit a license verification document that discloses disciplinary action taken against the license in the jurisdiction where the applicant was most recently licensed. The document should come directly from that jurisdiction.

361.6(3) Provide verification of current competence to practice sign language interpreting or transliterating by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has been most recently licensed and has been practicing during the time period in which the Iowa license was inactive sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. The licensee's name;
2. The date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completing 40 hours of continuing education within two years of the application for reactivation; and

(3) Verification of a current certification as identified in subrule 361.2(1), or of passing an examination identified in subrule 361.2(1), which was passed after the license became inactive; or

(4) Verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has been licensed and has been practicing during the time period in which the Iowa license was inactive sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. The licensee's name;
2. The date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; or

(2) Verification of completion of 80 hours of continuing education within two years of application for reactivation; and

(3) Verification of a current certification as identified in subrule 361.2(1), or of passing an examination identified in subrule 361.2(1), which was passed after the license became inactive; and

(4) Verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

645—361.7(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation of the license prior to practicing sign language interpreting or transliterating in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 154E and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 362
“Continuing Education for Sign Language Interpreters and Transliterators”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154E, 272C, and 147
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154E, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules set forth continuing education requirements for sign language interpreters and transliterators. The rules include definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rule, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that sign language interpreters and transliterators maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industry offers these courses so the Board of Sign Language Interpreters and Transliterators (Board) is not privy to exact costs, but research estimates it to be around \$10 per continuing education unit (CEU) for online courses, all the way up to \$60 per CEU. Quarterly Iowa State Registry of Interpreters for the Deaf workshops are often free, but the yearly conference costs licensees. Conferences tend to cost licensees approximately \$20 to \$30 per CEU. Some employers also provide CEUs for free. There are multiple entities that provide continuing education courses to licensees, and licensees can select which option they prefer based on cost or modality.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that sign language interpreters and transliterators maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry, including educational institutions, professional associations, and businesses, offer these courses, so the Board is not privy to exact costs, but research estimates it to be around \$400 on the low end, or \$2,400 on the high end every two years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 40 hours of continuing education for these license types every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department are the staff time needed to manage Board activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.35 full-time equivalent (FTE) position, which includes questions from the public and licensees, such as practice standards, continuing education, and Board meeting administration.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact from the proposed rules on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board did not recommend a reduction in hours.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and, ultimately, public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives include reducing the amount of continuing education required. A review of surrounding states has shown that other states do successfully manage continuing education programs with fewer hours required per renewal cycle. Currently, Iowa requires 40 hours of continuing education for these license types every two years. Missouri requires 20, Nebraska requires 24, Kansas requires 30 and Illinois and South Dakota require 40. After discussions with the Board regarding this topic, Board members were not in agreement to reduce the total number of hours.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring if the Board would recommend lowering the continuing education requirements. The Board has considered a change to the total continuing education hours and the frequency and the relation of such changes to the safety of the public. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation, so it is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The cost of continuing education is estimated at \$10 to \$60 per hour. While some sign language interpreters and transliterators are running a small business of their own, some also work for larger businesses or educational institutions. The cost of continuing education could be greater for small business owners since they would be responsible for the entire cost.

Conversely, the entities that provide continuing education may have a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 362 and adopt the following **new** chapter in lieu thereof:

CHAPTER 362
CONTINUING EDUCATION FOR SIGN LANGUAGE INTERPRETERS AND
TRANSLITERATORS

645—362.1(154E,272C) Definitions. For the purpose of these rules, the following definitions will apply:

“*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.

“*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 sign language interpreters and transliterators.

“*Continuing education*” means planned, organized learning acts acquired during 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.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a sign language interpreter or transliterator in the state of Iowa.

645—362.2(154E,272C) Continuing education requirements.

362.2(1) Requirements for permanent licensees. The continuing education compliance period runs concurrently with each two-year renewal period beginning on July 1 of each odd-numbered year and ending on June 30 of the next odd-numbered year. Each person who is licensed to practice as a sign language interpreter or transliterator in this state will be required to complete a minimum of 40 hours of continuing education as specified in rule 645—362.3(154E,272C).

362.2(2) Exception for new permanent licensees. A person licensed for the first time will not be required to complete continuing education as a prerequisite for the first renewal of the license. Thereafter, the new licensee will complete the continuing education requirements as set forth in rule 645—362.3(154E,272C). The licensee may use continuing education hours acquired anytime from the initial licensing until the second license renewal to meet the requirements.

362.2(3) NIC or RID Certification. A licensee who provides proof of a current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification meets continuing education requirements for that biennium renewal cycle.

362.2(4) Requirements for temporary license holders. The continuing education compliance period runs concurrently with each two-year renewal period beginning on the date of initial licensure. Temporary license holders will be required to obtain 40 hours of continuing education as set forth in rule 645—362.3(154E,272C). The temporary license holder may use only continuing education hours acquired during the current renewal period. Proof of continuing education hours acquired will be submitted with a temporary license renewal application.

362.2(5) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity.

362.2(6) No hours of continuing education will be carried over into the next renewal period.

362.2(7) The licensee is responsible for the cost of continuing education.

645—362.3(154E,272C) Standards.

362.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Is an organized program of learning fundamental to the practice of the profession that contributes directly to the professional competency of the licensee;

- b.* Is conducted by individuals who have specialized education and training in the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- c.* Fulfills stated program goals, objectives, or both; and
- d.* Provides proof of attendance, including:
 - (1) Date, location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

362.3(2) Specific criteria.

a. Continuing education will be obtained by attending programs relating to the practice of interpreting or transliterating for the deaf or hard of hearing and are:

- (1) Educational activities, including lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences;
- (2) Obtained in content areas that conform to the content areas specified in the Registry of Interpreters for the Deaf (RID) Certification Maintenance Program Standards and Criteria for Approved Sponsors, revised edition, June 2004, with the exception of the number of CEUs required, which is defined in paragraph 362.3(2)“*b.*” RID activity categories of independent study or teaching an academic class are not professional study categories that can be claimed for credit by temporary license holders.

b. Each renewal period, licensees will obtain 40 hours (4 CEUs) of continuing education, including no less than 30 hours (3 CEUs) of professional studies. The remaining 10 hours (1 CEU) may be in either professional or general studies. The board will accept proof of a current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification in lieu of proof of the 40 hours of continuing education.

c. Continuing education hours of credit equivalents for academic coursework per biennium are as follows:

- 1 academic semester hour = 15 continuing education hours
- 1 academic quarter hour = 10 continuing education hours
- 1 CEU = 10 continuing education hours

These rules are intended to implement Iowa Code section 272C.2 and chapter 154E.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 363
“Discipline for Sign Language Interpreters and Transliterators”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154E, 272C, 147, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154E, 272C, 147, and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu
Phone: 1.402.921.2210
PIN: 301 728 068#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O’Brien
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules provide protection to Iowans as the rules publicly define disciplinary options when a sign language interpreter or transliterator fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against the licensee’s license. Iowans have the ability to submit a complaint to the licensing board, who can then investigate the allegation. The Board of Sign Language Interpreters and Transliterators (Board) has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Health and Human Services Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the sign language interpreter and transliterator professions and are therefore excluded from the general disciplinary chapter. The grounds for discipline required in this rule are related to unethical conduct and are required by Iowa Code chapter 154E.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The proposed rules in this chapter are related to standard of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000, per public order.

Costs to the Department include the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.35 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees in relation to practice standards, continuing education, and Board meeting administration. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations is very minimal. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of these proposed rules is to ensure public safety and maintain a high level of care for Iowans. The Board receives a minimal number of complaints and issues a minimal number of disciplinary actions. In 2022, there were two complaints submitted, and the Board issued no public discipline. There are very few sign language interpreters and transliterators, with approximately 504 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, interpreting accurately requires a level of skill, so the Board believes that regulation is necessary.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because the practice of interpreting and transliterating requires skill and precision.

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.35 of an FTE. Due to the low number of complaints associated with this Board, costs specific to managing complaints and investigations are very minimal.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing these proposed rules are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of \$0 was paid into the General Fund by disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify low cost because the practice of interpreting and transliterating requires skill and precision. The Board receives a minimal number of complaints and issues a minimal number of disciplinary actions. In 2022, the Board received two complaints and issued no public discipline. There are very few sign language interpreters and transliterators, with approximately 504 licensed individuals. While a low number of complaints can call into question the extent to which a profession needs to be regulated, interpreting accurately requires a level of skill, so the Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive services from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 boards in the legacy Health and Human Services Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the sign language interpreters and transliterators professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules. The ground for discipline required in this rule is related to unethical conduct and is required by Iowa Code section 147.55.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The specific ground for discipline required in this rule related to unethical conduct is required by Iowa Code section 147.55.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

These proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rules are meant to ensure public safety in terms of practice standards for sign language interpreters and transliterators. While some interpreters and transliterators are running a small business of their own, others work for larger businesses or educational systems. To exempt a small business from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 363 and adopt the following **new** chapter in lieu thereof:

CHAPTER 363

DISCIPLINE FOR SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

645—363.1(154E) Definitions.

“Consumer” means an individual utilizing interpreting services who uses spoken English, American Sign Language, or a manual form of English, and in an interpreting situation or setting, the term “consumer” includes both the deaf or hard-of-hearing individual or individuals and the hearing individual or individuals present in such situation or setting.

645—363.2(154E,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—13.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

363.2(1) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (e.g., acts, knowledge, and practices) that constitutes unethical conduct includes but is not limited to the following:

a. Engaging in sexual activities or sexual contact with a consumer when there is a risk of exploitation or potential harm to the consumer or when the relationship could reasonably be expected to interfere with the interpreter’s or transliterator’s objectivity, competence, or effectiveness.

b. Failure to decline or to withdraw from an interpreting or transliterating assignment when the interpreter or transliterator does not possess the professional skills and knowledge required for the specific interpreting or transliterating situation or setting.

c. Failure to refrain from providing advice or personal opinions or aligning with one person over another in the course of one’s professional duties.

d. Discriminating against a consumer on the basis of age, sex, race, creed, illness, marital status, political belief, religion, mental or physical disability or diagnosis, sexual orientation, or economic or social status.

e. Failure to inform a consumer when federal or state laws require disclosure of confidential information.

f. Failure to avoid a conflict of interest when there is a risk of exploitation or potential harm to the consumer or when the relationship could reasonably be expected to interfere with the interpreter’s objectivity, competence, or effectiveness; or failure to disclose to a consumer an actual or perceived conflict of interest.

g. Failure to present a professional appearance that is not visually distracting and is appropriate to the setting.

363.2(2) Failure by a temporary license holder to comply with the requirements of 645—subrule 361.2(6).

These rules are intended to implement Iowa Code chapters 147, 154E and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 1
“Reportable Diseases, Poisonings and Conditions, and Quarantine and Isolation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 136A, 139A.2, 139A.3, 139A.3A, 139A.4, 139A.21, 139A.31 and 139A.33

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 135, 139A and 137

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

Via video/conference call:
meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

This proposed chapter provides for disease investigation and disease control through preventive measures including but not limited to quarantine and isolation. This chapter captures reportable communicable and noncommunicable diseases, cancers, and farm-related injuries.

The chapter defines procedure for members of the public to comply with the reporting requirements for the categories listed above, including:

- Who is required to report.
- When to report.
- What needs to be reported.
- How to report.

The chapter provides for cancer surveillance, which allows for evaluation of trends over time and evaluation of potential cancer clusters, as well as helping Iowa hospitals to monitor and improve the quality and comprehensiveness of their cancer care. Having administrative rules that allow the Iowa Cancer Registry to maintain their contract with the National Cancer Institute (NCI)-funded Surveillance, Epidemiology and End Results (SEER) Program allows the State of Iowa to maintain a high-quality registry at a very low cost to the State.

It also provides for congenital and inherited disorder surveillance to compile, evaluate, retain, and disseminate information on the occurrence, prevalence, causes, treatment, and prevention of congenital disorders. Congenital disorders shall be considered reportable conditions in accordance with rules adopted by the Department of Public Health (Department) and shall be abstracted and maintained by the registry.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The public does not incur any cost via implementation of this rulemaking.

- Classes of persons that will benefit from the proposed rulemaking:

Individuals or families near persons with communicable diseases will benefit as well as communities in which persons with reportable communicable diseases reside and individuals with congenital and inherited disorders.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Estimated figures below are projections based on past program performance as included in the Red Tape Rule Report for this chapter.

Identified Impacts*

| | SFY2024 | SFY2025 | SFY2026 | SFY2027 | SFY2028 | 5-Year Total |
|---------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Costs | | | | | | |
| HHS Implementation | \$1,238,000 | \$1,238,000 | \$1,238,000 | \$1,238,000 | \$1,238,000 | \$6,190,000 |
| Benefits | | | | | | |
| Improved Public Health & Safety | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | Indeterminate | Indeterminate | Indeterminate | Indeterminate | Indeterminate | Indeterminate |

*All monetary figures have been rounded to the nearest thousandth.

State general fund allocations support only a portion of the HHS implementation costs for Chapter 1. The state General Fund allocation has remained static. Federal grant funds provide approximately \$6.5 million in annual funding in support of Chapter 1 implementation. Federal government issues supplemental grant awards to support the response to outbreaks that impact the nation (e.g. COVID-19 and Mpox). These supplemental awards are in addition to the annual grant support.

- Qualitative description of impact:

Public health surveillance is foundational to public health practice. It aids in understanding diseases and their spread to determine appropriate actions to control outbreaks. If this chapter did not exist, it would limit the ability of public health officials to monitor, control, and prevent these reportable diseases and conditions. An inability to assess the incidence and impact of reportable conditions on Iowans would prevent the Department from conducting disease investigation, contact tracing, and connecting affected individuals with recommended testing and treatment. Ultimately, disease transmission would increase, as would sequelae of untreated sexually transmitted infections (STIs) (including chronic pelvic pain, pelvic inflammatory disease, vision and hearing problems, and death).

In addition, if this chapter did not exist, there would not be the ability to access the incidence, contributing factors, and impact to families of congenital and inherited disorders. There would not be data to inform prevention or treatment efforts for congenital and inherited disorders.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs personnel costs to support the procedures described in this chapter. These costs are reflected in the table above as “HHS Implementation.”

- Anticipated effect on state revenues:

No impact on state revenues has been identified.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The general fund dollars, supplemented largely by federal funding sources, supports a net value in improved public health and safety. If this chapter did not exist, it is very likely that the disease burden would increase, leading to increased absences from school and work, which could have an impact on the economy. If the Department were no longer able to isolate and/or quarantine individuals that either have a communicable disease or are at risk for developing and spreading a communicable disease, it would have a significant impact on morbidity and mortality across the state.

HHS would not be able to implement programs and activities authorized and required by Iowa Code chapter 136A, and would be unable to initiate, conduct and supervise screening and health care activities in order to detect and predict congenital and inherited disorders. HHS would also not be able to ensure the availability of and access to quality genetic and genomic services for Iowans.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

HHS is implementing an isolation and quarantine process and reporting for certain diseases and conditions in accordance with the Iowa Code. A less costly method has not been identified to achieve the purpose of this rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

HHS implements isolation and quarantine measures in accordance to requirements of the Iowa Code. The Department does have flexibility in setting parameters for process and investigation cooperation, as well as the reporting structure for communicable and noncommunicable diseases and conditions. The Department also has some flexibility in the communicable and noncommunicable diseases and conditions required to be reported pursuant to authority in Iowa Code. No alternative methods have been seriously considered as HHS believes these are the most effective for both cost and maintenance of public health.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

HHS believes the parameters established in this chapter for education, testing, and vaccination are at a level necessary to protect public health and safety.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 1 and adopt the following new chapter in lieu thereof:

CHAPTER 1 REPORTABLE DISEASES, POISONINGS AND CONDITIONS,

AND QUARANTINE AND ISOLATION

641—1.1(139A) Definitions. For the purpose of these rules, the following definitions will apply:

“*AIDS*” means the same as defined in Iowa Code chapter 141A.

“*Area quarantine*” means the same as defined in Iowa Code chapter 139A.

“*Business*” means the same as defined in Iowa Code chapter 139A.

“*Care provider*” means the same as defined in Iowa Code chapter 139A.

“*Case*” means an individual who has confirmatory evidence of disease.

“*Clinical laboratory*” means any laboratory performing analyses on specimens taken from the body of a person in order to assess that person’s health status.

“*Communicable disease*” means the same as defined in Iowa Code chapter 139A.

“*Congenital or inherited disorder*” means any congenital disorder as defined in Iowa Code chapter 136A or any inherited disorder as defined in Iowa Code chapter 136A.

“*Disease surveillance*” means the ongoing, systematic collection, analysis, and interpretation of health-related data essential for planning, implementation, and evaluation of public health programs and practices.

“*Exposure*” means contact with an agent in a manner that could cause disease or infection.

“*HBV*” means the same as Iowa Code chapter 139A.

“*Health care facility*” means the same as Iowa Code chapter 139A.

“*Health care provider*” means the same as defined in Iowa Code chapter 139A.

“*HIV*” means the same as defined in Iowa Code chapter 141A.

“*Hospital*” means the same as defined in Iowa Code chapter 135B.

“*IDSS*” means the Iowa disease surveillance system, a secure electronic statewide disease reporting and surveillance system.

“*Infectious disease*” means a disease caused by the entrance into the body of organisms, including but not limited to bacteria, protozoans, fungi, prions, or viruses which grow and multiply.

“*Infectious tuberculosis*” means pulmonary or laryngeal tuberculosis as evidenced by:

1. Isolation of *M. tuberculosis* complex (positive culture) from a clinical specimen or positive nucleic acid amplification test, or

2. Both radiographic evidence of tuberculosis, such as an abnormal chest X ray, CT, PET or MRI scan, and clinical evidence, such as a positive skin test or whole blood assay test for tuberculosis infection, coughing, sputum production, fever, or other symptoms compatible with infectious tuberculosis that lead a health care provider to diagnose infectious tuberculosis according to currently acceptable standards of medical practice and to initiate treatment for tuberculosis.

“*Investigation*” means an inquiry conducted to determine the specific source, mode of transmission, and cause of a disease or suspected disease occurrence and to determine the specific incidence, prevalence, and extent of the disease in the affected or general population. “Investigation” may also include the application of scientific methods and analysis to institute appropriate control measures.

“*Isolation*” means the same as defined in Iowa Code chapter 139A.

“*Local board*” means the same as defined in Iowa Code chapter 139A.

“*Local department*” means the same as defined in Iowa Code chapter 139A.

“*Placard*” means the same as Iowa Code chapter 139A.

“*Poison control or poison information center*” means any organization or program which has as one of its primary objectives the provision of toxicologic and pharmacologic information and referral services to the public and to health care providers (other than pharmacists) in response to inquiries about actual or potential poisonings.

“*Public health disaster*” means an incident as defined in Iowa Code section 135.140.

“*Quarantinable disease*” means any communicable disease that presents a risk of serious harm to public health and that may require isolation or quarantine to prevent its spread. “Quarantinable disease” includes but is not limited to cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, novel influenza, and severe acute respiratory syndrome (SARS).

“*Quarantine*” means the same as defined in Iowa Code chapter 139A.

“*Reportable cancers*” means those cancers included in the National Cancer Institute’s Surveillance, Epidemiology and End Results (SEER) Program.

“*Reportable disease*” means any disease or condition approved by the state epidemiologist or medical director and designated by this chapter.

“*Sexually transmitted disease or infection*” or “*STI*” means a disease or infection as identified by this chapter that is transmitted through sexual practices. “Sexually transmitted disease or infection” includes, but is not limited to, acquired immunodeficiency syndrome (AIDS), chlamydia, gonorrhea, hepatitis B, hepatitis C, human immunodeficiency virus (HIV), human papillomavirus, and syphilis.

“*Suspected case*” means an individual that presents with clinical signs or symptoms indicative of a reportable or quarantinable disease.

“*Toxic agent*” means any noxious substance in solid, liquid or gaseous form capable of producing illness in humans including, but not limited to, pesticides as defined in Iowa Code chapter 206, heavy metals, organic and inorganic dusts and organic solvents. Airborne toxic agents may be in the form of dusts, fumes, vapors, mists, gases or smoke.

641—1.2(139A) Authority. The director is the principal officer of the state to administer disease, poisoning and condition, and incident reporting and control. The Iowa Cancer Registry, administered by the Department of Epidemiology of the College of Public Health at the University of Iowa, is a public health authority for purposes of collecting cancer data in accordance with this chapter.

641—1.3(139A,141A) Reportable communicable and infectious diseases, poisonings or conditions, and cancers. Reportable communicable and infectious diseases, poisonings and conditions under this chapter are those listed in Appendices A and B. The director may also designate any disease, poisoning or condition or syndrome temporarily reportable for the purpose of a special investigation.

1.3(1) Cancer. Pursuant to Public Law 92-218 and Public Law 102-515, each occurrence of a reportable cancer that is diagnosed or treated in an Iowa resident or occurs in a nonresident who is diagnosed or treated in an Iowa facility shall be reported to the Iowa Cancer Registry.

1.3(2) Congenital and inherited disorders. Each occurrence of a congenital and inherited disorder that is diagnosed or treated in an Iowa resident or occurs in a nonresident who is diagnosed or treated in an Iowa facility is a reportable condition pursuant to Iowa Code chapter 136A, and records of these congenital and inherited disorders shall be abstracted and maintained in a central registry. Congenital and inherited disorder surveillance shall be performed to determine the occurrence and trends of congenital and inherited disorders, to conduct thorough and complete epidemiological surveys, to assist in the planning for and provision of services to children with congenital and inherited disorders and their families, and to identify environmental and genetic risk factors for congenital and inherited disorders.

641—1.4(135,139A) Reporting requirements.

1.4(1) Who is required to report.

a. Communicable and infectious diseases, and poisonings.

(1) Health care providers, hospitals, and clinical laboratories and other health care facilities are required to report cases of reportable diseases, poisonings and conditions. Health care providers and hospitals are exempted from reporting communicable and infectious disease laboratory results and blood lead testing if the healthcare provider or hospital ensures that the laboratory performing the analysis provides a report containing the required information to the department.

(2) School nurses are required to report suspected cases of a reportable disease, poisoning or condition occurring among the children supervised.

(3) Poison control and poison information centers are required to report inquiries about cases of a reportable disease, poisoning or condition received by them.

(4) Medical examiners are required to report their investigatory findings of any death which was caused by or otherwise involved a reportable disease, poisoning or condition.

(5) Occupational nurses are required to report cases of reportable diseases, poisonings and conditions.

(6) Hospitals, health care providers and clinical laboratories outside the state of Iowa shall immediately report any confirmed or suspected case of a reportable disease, poisoning or condition in an Iowa resident.

b. Reportable cancers. Health care providers, hospitals, clinical laboratories and health care facilities involved in the diagnosis, care or treatment of individuals with a reportable cancer.

c. Congenital and inherited disorders. Health care providers, clinics, clinical laboratories and other health care facilities are required to report cases of a congenital or inherited disorder.

1.4(2) *What to report.* Each report will contain all information as listed in Iowa Code chapter 139A, in addition to:

a. For communicable and infectious diseases:

- (1) The name of the reportable disease.
- (2) The treatment provided for the reportable disease.

b. For poisonings:

- (1) The analytical result.
- (2) In the case of blood lead testing, whether the sample is a capillary or venous blood sample.
- (3) For conditions not identified by a laboratory analysis, the date that the condition was diagnosed.
- (4) In the case of occupational conditions, the name of the patient's employer.

c. For reportable cancers:

- (1) Follow-up data.
- (2) Demographic, diagnostic, prognostic, treatment, and other medical information.

d. For congenital and inherited conditions:

- (1) Follow-up data.
- (2) Demographic, diagnostic, treatment and other medical information.
- (3) Tissue samples may also be submitted.

1.4(3) *How to report.* Information on when and how to report any of the diseases, conditions, or injuries included in this chapter can be found in Appendices A and B.

a. Immediate reporting by telephone of diseases identified as immediately reportable. A health care provider and a public, private, or hospital clinical laboratory will immediately report any confirmed or suspect case of a disease identified in Appendix A as immediately reportable to the department.

b. Other diseases that carry serious consequences or spread rapidly. A health care facility, health care provider and a public, private, or hospital clinical laboratory will immediately report any confirmed or suspected case of a common source epidemic or disease outbreak of unusual numbers.

c. Reporting to other public health authorities. The department may authorize hospitals, health care providers or clinical laboratories outside the state of Iowa to report any confirmed or suspect case of a reportable disease, poisoning, or condition to another public health authority for the purpose of facilitating a report to the department.

d. Cancers. The department has delegated to the Iowa Cancer Registry the responsibility for collecting cancer data.

(1) Those required to report shall submit required data to the Iowa Cancer Registry monthly, in an electronic format specified by the Iowa Cancer Registry. Those required to report may employ registrars with Iowa Cancer Registry-approved training, or contract with the Iowa Cancer Registry or an outside vendor to submit reportable cancer cases and required data elements to the Iowa Cancer Registry.

(2) As needed for SEER surveillance activities, the Iowa Cancer Registry shall have remote electronic access, where available, or physical access to all cancer-relevant medical records.

e. Congenital and inherited disorders. The department has delegated to the Iowa Registry for Congenital and Inherited Disorders the responsibility to maintain a central registry for congenital and inherited disorders. The Iowa Registry for Congenital and Inherited Disorders shall:

(1) Prior to collecting the data from health care providers, hospitals, clinics, clinical laboratories and other health care facilities, work with the reporting facility to develop a process for abstracting records which is agreeable to the reporting facility.

(2) Develop and distribute reporting forms where applicable.

(3) Develop an abstracting process for data to be supplemented with information obtained from records from hospitals, treatment centers, outpatient centers, clinics, pathology laboratories and physician offices.

INVESTIGATION

641—1.5(135,139A) Investigation of reportable diseases.

1.5(1) A health care provider and a public, private, or hospital clinical laboratory will provide the department, local board, or local department with all information necessary to conduct the investigation, including but not limited to medical records; exposure histories; medical histories; contact information; and test results necessary to the investigation, including positive, pending, and negative test results.

1.5(2) *Issuance of investigatory subpoenas.*

a. The department may upon the written request of a local board of health, the state public health medical director or the state public health epidemiologist or designee, subpoena records, reports, or any other evidence necessary to conduct a disease investigation. The subpoena will be signed by the department following review and approval of the written request for subpoena.

b. Process to challenge a subpoena. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena shall follow 441—Chapter 7.

ISOLATION AND QUARANTINE

641—1.6(135,193A) Isolation and quarantine. Isolation and quarantine should be consistent with guidelines provided by the Centers for Disease Control and Prevention.

1.6(1) *General provisions.*

a. Voluntary confinement. Prior to instituting mandatory isolation or quarantine pursuant to this rule, the department or a local board of health may request that an individual or group of individuals voluntarily confine themselves to a private home or other facility.

b. Isolation and quarantine. The department and local boards of health are authorized to impose and enforce isolation and quarantine restrictions. Isolation and quarantine will rarely be imposed by the department or by local boards of health. If a quarantinable disease occurs in Iowa, individuals with a suspected or active quarantinable disease and contacts to the case may be isolated or quarantined as the particular situation requires. Any isolation or quarantine imposed by the department or a local board of health will be established and enforced in accordance with this rule.

1.6(2) *Conditions and principles.* The department and local boards of health will adhere to all of the following conditions and principles when isolating or quarantining individuals or a group of individuals:

a. The isolation or quarantine will be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but not be limited to, confinement to private homes, other private premises, or public premises.

b. Isolated individuals will be confined separately from quarantined individuals.

c. The health status of isolated or quarantined individuals will be monitored regularly to determine if the individuals require further or continued isolation or quarantine.

d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, the individual will be promptly removed to isolation.

e. Isolated or quarantined individuals will be immediately released when the department or local board of health determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.

f. The needs of isolated or quarantined individuals will be addressed in a systematic and competent fashion including, but not limited to, providing adequate food, clothing, shelter, means of communicating with those in and outside of isolation or quarantine, medication, and competent medical care.

g. The premises used for isolation or quarantine will be maintained in a safe and hygienic manner and will be designed to minimize the likelihood of further transmission of infection or other harm to isolated or quarantined individuals.

h. To the extent possible, cultural and religious beliefs will be considered in addressing the needs of individuals in isolation or quarantine premises and in establishing and maintaining the premises.

1.6(3) Examination, testing, and treatment of quarantinable diseases.

a. A health care provider who attends an individual with a suspected or active quarantinable disease will make all reasonable efforts in accordance with guidance from a local health department or the department to examine or cause all household and other known contacts of the individual to be examined by a health care provider. The health care provider will promptly report to the department the results of such examination. If the individual refuses or is unable to undergo examination, the health care provider will all promptly report such information to the department.

b. When required by the department, all contacts of an individual who has a suspected or active quarantinable disease, including all adult and minor contacts, will submit to a diagnostic test or tests or other monitoring. If any suspicious abnormality is found, steps satisfactory to the department will be taken to refer the individual promptly to a health care provider or appropriate medical facility for further evaluation and, if necessary, treatment. The department or the referring health care provider or facility will notify the receiving health care provider or facility of the suspicious abnormality. When requested by the department, a health care provider will report the results of the examination of a contact to the case or suspected case or incident. If an individual with a suspected or active quarantinable disease fails to comply with a department order to submit to diagnostic testing or monitoring, such individual may be ordered to be isolated or quarantined as determined by the department.

c. Upon order of the department or local board of health, an individual with a suspected or active quarantinable disease will not attend the workplace or school and will not be present at other public places until the individual receives the approval of the department or a local board of health to engage in such activity. Upon order of the department or local board of health, employers, schools and other public places will exclude an individual with a suspected or active quarantinable disease. An individual may also be excluded from other premises or facilities if the department or a local board of health determines the premises or facilities cannot be maintained in a manner adequate to protect others against the spread of the disease.

d. A person diagnosed with or clinically suspected of having infectious tuberculosis shall complete voluntary treatment until, in the opinion of the health care provider or the state public health medical director, the person's tuberculosis is cured or such person is no longer a threat to public health. If such person refuses to complete the course of voluntary treatment, the department or local board of health may issue an order compelling mandatory treatment. Such order shall include the identity of the person subject to the mandatory treatment order, a description of the treatment ordered, the medical basis upon which the treatment is ordered, and a description of the potential medical and legal consequences of violating such order. A person who violates a mandatory treatment order may be subject to the penalties provided in Iowa Code section 135.38 or 137.117 and may be placed under mandatory quarantine or isolation in accordance with the provisions of this chapter.

e. A person diagnosed with extrapulmonary tuberculosis or clinically suspected of having infectious tuberculosis who fails to comply with a health care provider's recommendation for diagnostic testing may be ordered to undergo diagnostic testing by the department or local board of health. Such order shall include the identity of the person subject to mandatory diagnostic testing, a description of the diagnostic testing ordered, the medical basis upon which the diagnostic testing is ordered, and a description of the potential medical and legal consequences of violating such order. A person who violates a mandatory diagnostic testing order may be subject to the penalties provided in Iowa Code section 135.38 or 137.117 and may be placed under mandatory quarantine or isolation in accordance with the provisions of this chapter.

1.6(4) Premises standards.

a. If deemed appropriate by the department, isolation or quarantine placards will be posted in accordance with Iowa Code chapter 139A.

b. An individual subject to isolation or quarantine shall obey the rules and orders of the department or the local board of health and shall not go beyond the isolation or quarantine premises unless expressly authorized to do so by the order.

c. The department or a local board of health may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

d. No individual, other than an individual authorized by the department or a local board of health, will enter isolation or quarantine premises. If the department has requested the assistance of law enforcement in enforcing the isolation or quarantine, the department will provide law enforcement personnel with a list of individuals authorized to enter the isolation or quarantine premises.

e. Any individual entering an isolation or quarantine premises with or without authorization of the department or a local board of health may be isolated or quarantined pursuant to this rule.

1.6(5) Isolation and quarantine by local boards of health.

a. A local board of health may:

- (1) Isolate individuals who are presumably or actually infected with a quarantinable disease;
- (2) Quarantine individuals who have been exposed to a quarantinable disease;
- (3) Establish and maintain places of isolation and quarantine; and
- (4) Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

b. Isolation and quarantine undertaken by a local board of health will be accomplished according to the rules and regulations of the local board of health so long as such rules are not inconsistent with this chapter.

1.6(6) Isolation and quarantine by the department.

a. Authority.

(1) The department may:

1. Isolate individuals or groups of individuals who are presumably or actually infected with a quarantinable disease; and
2. Quarantine individuals or groups of individuals who have been exposed to a quarantinable disease, including individuals who are unable or unwilling to undergo examination, testing, vaccination, or treatment, pursuant to Iowa Code section 135.144.

(2) The department may:

1. Establish and maintain places of isolation and quarantine; and
2. Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

(3) Isolation and quarantine undertaken by the department, including isolation and quarantine undertaken by the department in the event of a public health disaster, will be established pursuant to paragraph 1.6(6)“b” or “c.”

b. *Temporary isolation and quarantine without notice.* The department may temporarily isolate or quarantine an individual or groups of individuals through an oral order, without notice, only if delay in imposing the isolation or quarantine would significantly jeopardize the department’s ability to prevent or limit the transmission of a communicable or possibly communicable disease to others. If the department imposes temporary isolation or quarantine of an individual or groups of individuals through an oral order, the department will issue a written order as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued isolation or quarantine is necessary to prevent or limit the transmission of a communicable or possibly communicable disease.

c. *Written order.* The department may isolate or quarantine an individual or groups of individuals through a written order issued pursuant to this rule.

(1) The written order will include all of the following:

1. The identity of the individual, individuals, or groups of individuals subject to isolation or quarantine.
2. The premises subject to isolation or quarantine.
3. The date at which isolation or quarantine commences.

4. The date at which isolation or quarantine commences.
5. A description of the less restrictive alternatives that were attempted and were unsuccessful, or the less restrictive alternatives that were considered and rejected, and the reasons such alternatives were rejected.
6. A statement of compliance with the conditions and principles for isolation and quarantine specified in subrule 1.9(3).
7. The legal authority under which the order is requested.
8. The medical basis upon which isolation or quarantine is justified.
9. A statement advising the individual, individuals, or groups of individuals of the right to appeal the written order and the rights of individuals and groups of individuals subject to quarantine and isolation.

(2) A copy of the written order will be provided to the individual to be isolated or quarantined within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure. If the order applies to a group or groups of individuals and it is impractical to provide individual copies, the order may be posted in a conspicuous place in the isolation or quarantine premises.

1.6(7) *Appeal from order imposing isolation or quarantine.* Individuals have the right to appeal an order imposing isolation or quarantine. Appeal procedures are as laid forth in 441—Chapter 7.

1.6(8) *Implementation and enforcement of isolation and quarantine.*

a. Jurisdictional issues. The department has primary jurisdiction to isolate or quarantine individuals or groups of individuals if the communicable disease outbreak has affected more than one county or has multicounty, statewide, or interstate public health implications. When imposing isolation or quarantine, the department will coordinate with the local health department as appropriate. If isolation or quarantine is imposed by the department, a local board of health or local health department may not alter, amend, modify, or rescind the isolation or quarantine order.

b. Assistance of local boards of health and local health departments. If isolation or quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas will assist in the implementation of the isolation or quarantine order.

c. Assistance of law enforcement. Pursuant to Iowa Code chapter 135, all peace officers of the state will enforce and execute a lawful department order for isolation or quarantine within their respective jurisdictions. The department will take all reasonable measures to minimize the risk of exposure to peace officers and others assisting with enforcement of an isolation or quarantine order.

d. Penalty. Violation of a lawful isolation or quarantine order will be subject to penalties pursuant to Iowa Code chapter 135.

e. Enforcement action. The department may file a civil action in Polk County district court or in the district court for the county in which the individual resides or is located to enforce a department order for isolation or quarantine. Such action will be filed in accordance with the Iowa Rules of Civil Procedure.

641—1.7(135,139A) Area quarantine.

1.7(1) *General provisions.* The department and local boards of health are authorized to impose and enforce area quarantine in accordance with this rule. Area quarantine will rarely be imposed by the department or by local boards of health.

1.7(2) *Conditions and principles.* The department and local boards of health will adhere to all of the following conditions and principles when imposing and enforcing area quarantine:

a. Area quarantine will be imposed by the least restrictive means necessary to prevent or contain the spread of a suspected or confirmed quarantinable disease or suspected or known hazardous or toxic agent.

b. Area quarantine will be immediately terminated when the department or a local board of health determines that no substantial risk of exposure to a quarantinable disease or hazardous or toxic agent continues to exist.

c. The geographic boundaries of an area quarantine will be established by risk assessment procedures including medical and scientific analysis of the quarantinable disease or hazardous or toxic agent, the location of the affected area, the risk of spread or contamination, and other relevant information.

1.7(3) Area quarantine sites.

a. Sites of area quarantine will be prominently identified to restrict ingress to and egress from, to the extent practicable. The department or a local board of health may placard or otherwise identify the site, or may request the assistance of law enforcement in identifying the site.

b. No individual, other than an individual authorized by the department or a local board of health, will enter a building, structure, or other physical location subject to area quarantine. The department or a local board of health may authorize public health officials, environmental specialists, health care providers, or others access to an area quarantine site as necessary to conduct public health investigations, to decontaminate the site, or for other public health purposes. Notwithstanding any provision in this chapter to the contrary, law enforcement, fire service, and emergency medical service providers may enter an area quarantine site to provide emergency response services or to conduct emergency law enforcement investigations or other emergency activities without authorization by the department or a local board of health. If the department has requested the assistance of law enforcement in enforcing the area quarantine, the department will provide law enforcement personnel with a list of individuals authorized to enter the area quarantine site.

c. An individual authorized to enter an area quarantine site may be required to wear personal protective equipment as appropriate.

d. No individual, other than an individual authorized by the department or a local board of health, will remove any item or object from a building, structure, or other physical location subject to area quarantine.

e. An individual entering an area quarantine site without the department's or local board of public health's authorization may be isolated or quarantined and may be found guilty of a simple misdemeanor.

1.7(4) Area quarantine by local boards of health or the department.

a. Authority.

(1) The department, through the director, the department's medical director, or the director or medical director's designee, may impose area quarantine through oral or written order. Prior to imposing area quarantine, the department will attempt to notify the local board or boards of health in the affected geographic area. If attempts to notify the local boards of health are initially unsuccessful, the department will continue to make regular notification attempts until successful.

(2) A local board of health may impose area quarantine through oral or written order. Prior to imposing area quarantine, a local board of health will attempt to notify the department by contacting the director, medical director, or department duty officer by telephone. If attempts to notify the department are initially unsuccessful, the local board of health will continue to make regular notification attempts until successful.

b. *Temporary area quarantine without notice.* The department or a local board of health may temporarily impose area quarantine through an oral order, without notice, only if delay in imposing area quarantine would significantly jeopardize the department's or local board's ability to prevent or contain the spread of a suspected or confirmed quarantinable disease or to prevent or contain exposure to a suspected or known hazardous or toxic agent. If the department or local board imposes temporary area quarantine through an oral order, a written order will be issued as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued area quarantine is necessary.

c. *Written order.* The department or local board may impose area quarantine through a written order issued pursuant to this rule.

(1) The written order will include all of the following:

1. The building or buildings, structure or structures, or other definable physical location, or portion thereof, subject to area quarantine.

2. The date the area quarantine commences and the date the area quarantine will be terminated, if known.

3. The suspected or confirmed quarantinable disease or the chemical, biological, radioactive, or other hazardous or toxic agent.
4. A statement of compliance with the conditions and principles for area quarantine specified in subrule 1.13(2).
5. The legal authority under which the order is imposed.
6. The medical or scientific basis upon which area quarantine is justified.
7. A statement advising the owner or owners of the building or buildings, structure or structures, or other definable physical location subject to area quarantine of the right to appeal the written order and the rights of owners of sites subject to area quarantine.

(2) A copy of the written order will be provided to the owner or owners of the building or buildings, structure or structures, or other definable physical location subject to area quarantine within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure; or, if the order applies to a group of owners and it is impractical to provide individual notice to each owner, the written order will be posted in a conspicuous place at the site of area quarantine.

1.7(5) Implementation and enforcement of area quarantine.

a. Jurisdictional issues. The department has primary jurisdiction to impose area quarantine if the quarantinable disease or hazardous or toxic agent has affected more than one county and implicates multicounty or statewide public health concerns. If area quarantine is imposed by the department, a local board of health or local health department may not alter, amend, modify, or rescind the area quarantine order.

b. Assistance of local boards of health and local health departments. If area quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas will assist in the implementation of the area quarantine.

c. Assistance of law enforcement. Pursuant to Iowa Code chapter 135, all peace officers of the state will enforce and execute a lawful department order for area quarantine within their respective jurisdictions. The department will take all reasonable measures to minimize the risk of individual exposure of peace officers and others assisting with enforcement of an area quarantine order.

d. Emergency response, investigation, and decontamination—authority of other agencies. Emergency response, investigation, and decontamination activities in and around an area quarantine site will be conducted by law enforcement, fire service, emergency medical service providers, or other appropriate federal, state, or local officials in accordance with federal and state law and accepted procedures and protocols for emergency response, investigation, and decontamination. This rule is not to be construed to limit the authority of law enforcement, fire service, emergency medical service providers, or other federal, state, or local officials to conduct emergency response, investigation, or decontamination activities to the extent authorized by federal and state law and accepted procedures and protocols.

e. Penalty. Violation of this section will result in penalty pursuant to Iowa Code chapter 135.

f. Enforcement action. To enforce a department order for quarantine, the department may file a civil action in Polk County District Court or in the district court for the county in which the area quarantine will be enforced. Such action will be filed in accordance with the Iowa Rules of Civil Procedure.

641—1.8(139A,22) Confidentiality. Reportable disease records and information, with the exception of AIDS and HIV records, which identify a person or a business named in a report, may be disclosed under the following limited circumstances:

1.8(1) By and between department employees and agents who have a need for the record in the performance of their duties.

1.8(2) By and between department employees and agents and local boards of health and local health departments as necessary to conduct disease surveillance and investigation, to the extent necessary to protect the health or life of the named party, or to enforce a department order or an order of a local board of health.

1.8(3) By and between department employees and agents and health care providers, laboratories, and hospitals as necessary to conduct disease surveillance or an investigation, to the extent necessary to protect the health or life of the named party, or to enforce a department order or an order of a local board of health.

1.8(4) By and between department employees and agents and employees and agents of federal, state, and local agencies as necessary to conduct disease surveillance or an investigation or to enforce a department order or an order of a local board of health.

1.8(5) By and between department employees and agents and employees and agents of tribes and tribal public health authorities as necessary to conduct disease surveillance or an investigation or to enforce a department order or an order of a local board of health.

1.8(6) Reportable disease information may be included in an isolation or quarantine order or placard as necessary to prevent the spread of a quarantinable disease.

1.8(7) Pursuant to rule 641—175.9(17A,22) or 641—175.10(17A,22).

STATE HYGIENIC LABORATORY

641—1.9(135,139A) Specimens for which the fee charged by the state hygienic laboratory will be waived. Pursuant to Iowa Code section 263.8, the state hygienic laboratory will waive testing fees for conditions deemed to be of public health significance by the department with approval from the state medical director or the state epidemiologist. A list of conditions and the criteria for which the fee is waived can be found on the HHS website.

APPENDIX A

Iowa Department of Health and Human Services Table of Reportable Communicable and Infectious Diseases

Report cases of the diseases listed in the following table to the department within the time frame specified in the When to Report column and by the reporting method in the How to Report column.

To report diseases immediately, use the 24/7 disease reporting telephone hotline: 1-800-362-2736.

IMMEDIATELY report diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when there is reasonable suspicion that the disease, syndrome, poisoning or condition may be the result of a deliberate act such as terrorism.

IMMEDIATELY report to the department outbreaks of any kind, diseases that occur in unusual numbers or circumstances, unusual syndromes, or uncommon diseases. Outbreaks may be infectious, environmental or occupational in origin and include food-borne outbreaks or illness secondary to chemical exposure (e.g., pesticides, anhydrous ammonia).

Report diseases by:

Entering into the Iowa Disease Surveillance System (IDSS): For IDSS-related questions, call the Center for Acute Disease Epidemiology (CADE) at 1-800-362-2736.

Fax: (515)281-5698

Mail:

Iowa Department of Health and Human Services
Center for Acute Disease Epidemiology
Lucas State Office Building
321 E. 12th Street

Des Moines, Iowa 50319

Isolates or specimens shall be sent to:
 State Hygienic Laboratory at the University of Iowa (SHL)
 U of I Research Park
 2490 Crosspark Road
 Coralville, Iowa 52241-4721

For specimen submission questions, call (319)335-4500 or go to www.shl.uiowa.edu.

| Diseases | When to Report | How to Report |
|---|-----------------------|---|
| Acquired immune deficiency syndrome (AIDS) and AIDS-defining conditions | 7 days | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Phone (515)242-5141 or (515)281-6918 Mail <ul style="list-style-type: none"> • Health care providers: use the Pediatric or Adult Confidential Case Report Form • Laboratories: send copy of lab report or the Iowa Confidential Report of Sexually Transmitted Disease & HIV Infection. Mark envelope "Attention 03" For HIV/AIDS-related questions, call (515)242-5141 |
| Anthrax | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Botulism (including infant botulism) | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Brucellosis (Brucella) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Campylobacteriosis (Campylobacter) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Chlamydia | 3 days | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Secure electronic data system (as determined by the Department) Fax (515)725-1278 Phone (515)281-3031 Mail <ul style="list-style-type: none"> • Use the Iowa Confidential Report of Sexually Transmitted Disease • Mark envelope "Attention 00" |
| Cholera | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Cryptosporidiosis | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Cyclospora | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |

| Diseases | When to Report | How to Report |
|--|-----------------------|---|
| Diphtheria | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Escherichia coli shiga toxin-producing and related diseases (includes HUS and TTP) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail Laboratories send isolate or specimen to the SHL |
| Giardiasis (Giardia) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Gonorrhea | 3 days | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Secure electronic data system (as determined by the Department) Fax (515)725-1278 Phone (515)281-3031 Mail <ul style="list-style-type: none"> ● Use the Iowa Confidential Report of Sexually Transmitted Disease ● Mark envelope "Attention 00" |
| Haemophilus influenzae type B invasive disease | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 Laboratories send isolate or specimen to the SHL |
| Hansen's disease (leprosy) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Hantavirus syndromes | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Hepatitis A | 1 day | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone, IDSS or fax |
| Hepatitis B, C, D, E | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Human immunodeficiency virus (HIV) cases Death of a person with HIV Perinatally exposed newborn and child (newborn and child who was born to an HIV-infected mother) | 7 days | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Phone (515)242-5141 or (515)281-6918 Mail <ul style="list-style-type: none"> ● Health care providers: use the Pediatric or Adult Confidential Case Report Form ● Laboratories: send copy of lab report or the Iowa Confidential Report of Sexually Transmitted Disease & HIV Infection. Mark envelope "Attention 03" For HIV/AIDS-related questions, call (515)242-5141 |
| Legionellosis (Legionella) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Listeria monocytogenes invasive disease | 1 day | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone, IDSS, or fax Laboratories send isolate or specimen to the SHL |

| Diseases | When to Report | How to Report |
|---|-----------------------|--|
| Malaria | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Measles (rubeola) | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Meningococcal invasive disease | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 Laboratories send isolate or specimen to the SHL |
| Mosquito-borne diseases (includes chikungunya, dengue, eastern equine encephalitis, La Crosse, St. Louis, Venezuelan equine encephalitis, West Nile, and western equine encephalitis) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Mumps | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Pertussis | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Plague | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Poliomyelitis | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Psittacosis | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Q fever | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Rabies, animal | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Rabies, human | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Rubella (including congenital) | 1 day | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone, IDSS, or fax |
| Salmonellosis (Salmonella) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail Laboratories send isolate or specimen to the SHL |
| Severe acute respiratory syndrome (SARS) | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Shigellosis (Shigella) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail Laboratories send isolate or specimen to the SHL |

| Diseases | When to Report | How to Report |
|--|-----------------------|--|
| Smallpox | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Syphilis | 3 days | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Secure electronic data system (as determined by the Department) Fax (515)725-1278 Phone (515)281-3031 Mail <ul style="list-style-type: none"> • Use the Iowa Confidential Report of Sexually Transmitted Disease • Mark envelope "Attention 00" |
| Tetanus | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Tickborne diseases (includes anaplasmosis, babesiosis, ehrlichiosis, Lyme disease, and Rocky Mountain spotted fever) | 3 days | Report for Iowa residents. Phone, IDSS, fax or mail |
| Tuberculosis, pulmonary and laryngeal (infectious) | 1 day | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone (515)281-7504 or fax to (515)281-4570 |
| Tuberculosis, extrapulmonary | 3 days | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone (515)281-7504 or fax to (515)281-4570 |
| Tularemia | 3 days | Report for Iowa residents. Phone, IDSS or fax |
| Typhoid fever | 1 day | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone, IDSS or fax |
| Vancomycin intermediate Staphylococcus aureus (VISA) and vancomycin-resistant Staphylococcus aureus (VRSA) | 1 day | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone, IDSS or fax Laboratories send isolate or specimen to the SHL |
| Viral hemorrhagic fever (VHF) (e.g., Lassa, Marburg, Ebola, and Crimean-Congo) | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |
| Yellow fever | Immediately | Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 |

APPENDIX B**Iowa Department of Health and Human Services
Table of Reportable Poisonings and Conditions**

Report cases of the poisonings and conditions listed in the following table to the department within the time frame specified in the When to Report column and by the reporting method in the How to Report column.

To report diseases immediately, use the 24/7 disease reporting telephone hotline: 1-800-362-2736.

IMMEDIATELY report diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when there is reasonable suspicion that the disease, syndrome, poisoning or condition may be the result of a deliberate act such as terrorism.

IMMEDIATELY report to the department outbreaks of any kind, diseases that occur in unusual numbers or circumstances, unusual syndromes, or uncommon diseases. Outbreaks may be infectious, environmental or occupational in origin and include food-borne outbreaks or illness secondary to chemical exposure (e.g., pesticides, anhydrous ammonia).

Mailing address:

Bureau of Environmental Health Services
Iowa Department of Health and Human Services
321 East 12th Street
Des Moines, Iowa 50319-0075

Telephone: 1-800-972-2026

Fax: (515)281-4529

| Poisoning or Condition | Cases to Report | When to Report | How to Report |
|-------------------------------|---|-----------------------|--|
| Arsenic poisoning | Blood arsenic values equal to or greater than 70 µg/L Urine arsenic values equal to or greater than 100 µg/g of creatinine | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Blood lead testing | All analytical results greater than or equal to 20 micrograms per deciliter (µg/dL) in a child under the age of 6 years or a pregnant woman | Daily | By telephone: 1-800-972-2026 |
| | All other analytical values for all blood lead analyses | Weekly | Electronic format specified by the department |
| Cadmium poisoning | Blood cadmium values equal to or greater than 5 µg/L Urine cadmium values equal to or greater than 3 µg/g of creatinine | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |

| Poisoning or Condition | Cases to Report | When to Report | How to Report |
|--|--|----------------|--|
| Carbon monoxide (CO) poisoning | Blood carbon monoxide level equal to or greater than 10% carboxyhemoglobin or its equivalent with a breath analyzer test, or a clinical diagnosis of CO poisoning regardless of any test results | Daily | By telephone: 1-800-972-2026 |
| Hypersensitivity pneumonitis | All cases | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Mercury poisoning | Blood mercury values equal to or greater than 2.8 µg/dL Urine mercury values equal to or greater than 20 µg/L | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Methemoglobinemia | Blood analyses showing greater than 5% of total hemoglobin present as methemoglobin | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Microcystin toxin poisoning | All cases | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Noncommunicable respiratory illness | All cases | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Occupationally related asthma, bronchitis or respiratory hypersensitivity reaction | All cases | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Pesticide poisoning (including pesticide-related contact dermatitis) | All cases | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Severe skin disorder | All cases | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |
| Toxic hepatitis | All cases | Weekly | Format specified by department. Electronic reporting if available. Alternatives include by mail, telephone, and facsimile. |

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 2
“Hepatitis Programs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135.19
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

Via video/conference call:
meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

This chapter defines parameters of a viral hepatitis program. This program is designed to identify people most at risk of exposure to viral hepatitis and to distribute information regarding dangers presented by the disease and to make available hepatitis A and hepatitis B vaccinations and hepatitis C testing.

Rule language defines a list of individuals by category who are at an increased risk for viral hepatitis exposure and details the nature of educational information to be provided to such individuals, as well as the form and manner of information distribution. A vaccination and testing program is established offering testing through local health departments, clinics, and community-based organizations to individuals most impacted by the viruses. Agencies offering testing and vaccination services are also to provide education materials, pretest and posttest counseling, and referral services.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Not applicable.
 - Classes of persons that will benefit from the proposed rulemaking:
Individuals at increased risk for exposure to viral hepatitis will benefit. Communities in which individuals at increased risk of exposure to viral hepatitis live will also benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Estimated figures below are projections based on past program performance as included in the Red Tape Rule Report for this chapter.

Identified Impacts*

| | SFY2024 | SFY2025 | SFY2026 | SFY2027 | SFY2028 | 5-Year Total |
|---------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Costs | | | | | | |
| HHS Implementation | (\$129,000) | (\$130,000) | (\$128,000) | (\$128,000) | (\$127,000) | (\$642,000) |
| Benefits | | | | | | |
| Improved Public Health & Safety | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | Indeterminate | Indeterminate | Indeterminate | Indeterminate | Indeterminate | Indeterminate |

*All monetary figures have been rounded to the nearest thousandth.

- Qualitative description of impact:

Providing access to vaccination and testing for individuals most at risk of exposure to viral hepatitis prevents further spreading of the virus, thus protecting public health and safety. Testing individuals increases the number of people at increased risk of exposure who are aware of their hepatitis C virus (HCV) status. This allows for individuals living with HCV to be linked to treatment earlier preventing costly medical conditions including cirrhosis and hepatocellular carcinoma. In 2022, contracted agencies conducted 1,026 HCV tests and identified 47 people living with HCV. This represented 6.9 percent of all new diagnoses in Iowa in 2022 (compared to 4.3 percent in 2021 and 4.1 percent over the five-year period).

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs costs for personnel, test kits, vaccines, and processing of laboratory tests at the State Hygienic Laboratory. Testing and vaccination is provided through contracted services. These costs are reflected in the table above as “HHS Implementation.”

- Anticipated effect on state revenues:

No impact on state revenues has been identified.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost benefit analysis above shows a net value of improved public health and safety. Eliminating the viral hepatitis program, or components thereof, would result in a decrease in available education, testing, vaccination, and treatment of the virus. This may result in increased community spread and a negative impact on public health and safety.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Tests and vaccines are offered to Iowans at no cost on a voluntary basis. Local public health and community-based organizations are reimbursed for their time and effort. This chapter defines those at increased risk of exposure to viral hepatitis as outlined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. HHS has established parameters for education, testing, and vaccination at the level the Department of Public Health feels necessary to protect public health and safety. A less costly method has not been identified to achieve the purpose of this rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

HHS implements the viral hepatitis program in accordance with requirements of the Iowa Code. The Department has flexibility in setting parameters for educational information to be provided to individuals

at risk of exposure, as well as the form and manner of information distribution. The Department also has some flexibility in establishing testing and vaccination parameters for local health departments, clinics, and community-based organizations conducting testing under the program.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

HHS believes the parameters established in this chapter for education, testing, and vaccination are at a level necessary to protect public health and safety.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2 HEPATITIS PROGRAMS

VIRAL HEPATITIS PROGRAM—VACCINATIONS AND TESTING

641—2.1(135) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Contracted agencies*” means local health departments, clinics, and community-based organizations that are funded by the department to provide HCV testing and vaccination services.

“*HCV*” means the hepatitis C virus as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

“*HIV*” means the same as defined in Iowa Code section 141A.1.

“*Viral hepatitis*” means inflammation of the liver caused by one of several viruses: hepatitis A, B, C, D, and E.

641—2.2(135) Exposure risks for hepatitis C virus. The following individuals are at increased risk of exposure to HCV as described by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services:

- People living with HIV;
- People who have ever injected drugs;
- People with selected medical conditions, including those who ever received maintenance hemodialysis;
- Recipients of clotting factors made before 1987;

- e.* Recipients of blood transfusions, blood products, and organ transplants that occurred before 1992;
- f.* Health care, emergency medical, and public safety personnel after needle sticks, sharps, or mucosal exposures to HCV-positive blood; and
- g.* Infants born to mothers living with HCV.

641—2.3(135) Information for public distribution. The department will make available educational materials to the public on hepatitis C infection, transmission, and where to seek testing services as defined on the department's website.

641—2.4(135) Hepatitis vaccination and testing program.

2.4(1) When sufficient state and federal funds are available, the department will maintain a vaccination and testing program. The program shall offer HCV testing and hepatitis A and B vaccinations through local health departments, clinics, and community-based organizations to individuals at an increased risk of exposure to viral hepatitis as described in the Viral Hepatitis Prevention and Testing Services Manual dated December 2023 and available on the department's website. Contracted agencies offering testing and vaccination services shall be required to provide integrated HIV, viral hepatitis, and sexually transmitted infection education; pretest and posttest counseling; and referral services.

2.4(2) Contracted agencies shall provide individuals presenting for testing and/or vaccination services with education explaining viral hepatitis and how to reduce the risk of acquiring it.

2.4(3) Contracted agencies shall provide individuals testing positive for viral hepatitis with information about the diagnosis and treatment options and with a referral list of health care providers to aid in seeking treatment, additional follow-up testing, and other hepatitis-related services.

These rules are intended to implement Iowa Code section 135.19.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 7
“Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools,
Licensed Child Care Centers or Institutions of Higher Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 139A.8, 139A.26, and 22.7
State or federal law(s) implemented by the rulemaking: Not applicable

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 7 describes immunization requirements for all persons enrolled or attempting to enroll in a licensed child care center or a public or nonpublic elementary or secondary school in Iowa, including those who are provided private instruction. Required immunizations listed in the chapter are those defined by the Iowa Code or approved by the Council on Health and Human Services.

The chapter defines procedure for members of the public to comply with immunization requirements, including how to:

- Request an individual exclusion for medical or religious reasons.
- Provide required education on meningococcal disease to students of institutions of higher education with an on-campus residence hall or dormitory.
- Provide proof of immunization to the school or licensed child care center in which the applicant wishes to enroll.
- Maintain records and complete reporting duties as an admitting official of a licensed child care center or elementary or secondary school.

HHS maintains a statewide immunization and health screening registry to allow enrolled users to maintain and access immunization and health screening histories for purposes of ensuring that patients are fully immunized and screened.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Parents with children receiving required immunizations, or their health insurance provider, and adults receiving required immunizations, or their health insurance provider, will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:

Licensed child care centers, public or nonpublic elementary or secondary schools, and private education providers serving immunized students will benefit.

Communities in which immunized persons reside will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Estimated figures below are projections based on past program performance as included in the Red Tape Rule Report for this chapter.

Identified Impacts*

| | SFY 2024 | SFY 2025 | SFY 2026 | SFY 2027 | SFY 2028 | Five-Year Total |
|---|-------------|-------------|-------------|-------------|-------------|-----------------|
| Costs | | | | | | |
| HHS Implementation Required Immunizations | \$5,146,000 | \$5,246,000 | \$5,346,000 | \$5,446,000 | \$5,546,000 | \$26,130,000 |
| Benefits | | | | | | |
| Improved Public Health and Safety | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | \$5,146,000 | \$5,246,000 | \$5,346,000 | \$5,446,000 | \$5,546,000 | \$26,130,000 |

*All monetary figures have been rounded to the nearest thousandth.

- Qualitative description of impact:

Child care and school immunization requirements play an important role in increasing immunization rates and ensuring that environments where children congregate are safe. Vaccines are the best defense against infectious diseases, which may have serious complications such as pneumonia, meningitis and even death. Achieving and maintaining high immunization rates is the best way to protect all children from vaccine-preventable diseases while at a child care and school setting. The CDC estimates that vaccination of children born between 1994 and 2021 will prevent 472 million illnesses, 1,052,000 deaths, and save nearly \$2.2 trillion in societal costs. For every \$1 spent on each of the 11 vaccines given routinely to children, there is a savings of \$10.10 in medical costs by averting costs to treat diseases.

This chapter also allows for the creation of an Immunization Registry. Immunization Information Systems (IIS) benefit health care providers and the public by storing patient records from all ages and by keeping patients on schedule for recommended immunizations, documenting vaccine contraindications and reactions, validating immunization history, providing vaccine recommendations, producing patient reminder and recall notices, and managing health care provider vaccine inventory.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs personnel costs to support the procedures described in this chapter. These costs are reflected in the figure above, labeled as “HHS Implementation.”

- Anticipated effect on state revenues:

No impact identified.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost-benefit analysis above shows a net value of \$26,130,000 and improved public health and safety. Eliminating the immunization tracking and reporting mechanisms required by this chapter, or significantly decreasing the number and/or types of immunizations required, may significantly lower immunization rates. Lowered immunization rates may lead to increased incidence

of vaccine-preventable disease resulting in hospitalizations and deaths. This would also impact the ability of public health agencies and health care providers to serve Iowans with or exposed to vaccine-preventable diseases.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Required immunizations listed in the chapter are those defined by the Iowa Code or approved by the Council on Health and Human Services. HHS has established parameters for immunization tracking and reporting at a level the Department feels is necessary to protect public health and safety. A less costly method has not been identified to achieve the purpose of this chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

HHS supports those immunizations required in accordance with the Iowa Code or as approved by the Council on Health and Human Services. This chapter clarifies procedure but does not ascribe HHS duties or implementation elements in addition to those directly defined in the Iowa Code.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7

IMMUNIZATION AND IMMUNIZATION EDUCATION: PERSONS ATTENDING ELEMENTARY OR SECONDARY SCHOOLS, LICENSED CHILD CARE CENTERS OR INSTITUTIONS OF HIGHER EDUCATION

641—7.1(139A) Definitions.

“*Admitting official*” means the superintendent of schools or the superintendent’s designated representative if a public school; if a nonpublic school or licensed child care center, the governing official of the school or child care center.

“*Advanced registered nurse practitioner*” or “*ARNP*” means an advanced registered nurse practitioner as defined in 655—Chapter 7.

“*Applicant*” means any person seeking enrollment in a licensed child care center or elementary or secondary school.

“*Certified medical assistant*” means a person who is certified to practice as a certified medical assistant following completion of a postsecondary medical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs or the Accrediting Bureau of Health Education Schools and successful completion of the certification examination and who is directed by a supervising physician, physician assistant, or nurse practitioner.

“*Competent private instruction*” is as defined in Iowa Code section 299A.1.

“*Elementary school*” means kindergarten if provided, and grades one through eight or grades one through six when grades seven and eight are included in a secondary school.

“*Enrolled user*” means a user of the registry who has completed an enrollment form that specifies the conditions under which the registry can be accessed and who has been issued an identification code and password by the department.

“*Health screening*” means a vision screen, dental screen, or refugee health screen.

“*Immunization registry*” or “*registry*” means the department of health and human services’ database of confidential, population-based, immunization and health screening records.

“*Institution of higher education*” means a postsecondary school.

“*Nurse*” means a person licensed to practice as a nurse pursuant to Iowa Code chapter 152.

“*On-campus residence hall or dormitory*” means campus housing for students that is owned or leased by the institution of higher education and located on a recognized campus site.

“*Pharmacist*” means a person licensed to practice pharmacy pursuant to Iowa Code chapter 155A.

“*Physician*” means a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to Iowa Code chapter 148.

“*Physician assistant*” means a person licensed to practice as a physician assistant pursuant to Iowa Code chapter 148C.

“*Postsecondary school*” means a postsecondary institution under the control of the state board of regents, a community college established under Iowa Code chapter 260C, or an accredited private institution as defined in Iowa Code section 261.9.

“*Postsecondary student*” means a person who has officially registered with a postsecondary school, as determined by the school, and who physically attends class on the school’s campus. For purposes of these rules, “postsecondary student” does not include a person who is exclusively registered in a correspondence course or continuing education class or who attends class exclusively by means of distance learning or through other means which do not require the person’s physical presence on the school’s campus.

“*Screening provider*” means an ophthalmologist, optometrist, physician, free clinic, child care center, local public health department, public or accredited nonpublic school, community-based organization, advanced registered nurse practitioner (ARNP), physician assistant, dentist or dental hygienist.

“*Secondary school*” means:

1. A junior high school comprising grades 7, 8 and 9, and a senior high school;
2. A combined junior-senior high school comprising grades 7 through 12;
3. A junior high school comprising grades 7 and 8 and a high school comprising grades 9 through 12;
4. A high school comprising grades 9 through 12.

“*Signature*” means an original signature or the authorized use of a stamped signature or electronic signature.

“*Student*” means an individual who is enrolled in a licensed child care center, elementary school or secondary school.

641—7.2(139A) Persons included. The immunization requirements specified elsewhere in these rules apply to all persons enrolled or attempting to enroll in a licensed child care center or a public or nonpublic elementary or secondary school in Iowa including those who are provided competent private instruction.

641—7.3(139A) Persons excluded. Exclusions to these rules are permitted on an individual basis for medical and religious reasons pursuant to Iowa Code section 139A.8. Applicants approved for medical or religious exemptions shall submit to the admitting official a valid department certificate of immunization exemption.

7.3(1) To be valid, a medical certificate of immunization exemption shall contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) exempted, and an expiration date (if applicable) and shall bear the signature of a physician, nurse practitioner, or physician assistant. Language included on the medical certificate of immunization exemption referencing rule 641—7.3(139A) cannot be altered. Any edits or alterations to the medical certificate of immunization exemption referencing rule 641—7.3(139A) will invalidate the certificate.

a. A medical exemption may apply to a specific vaccine(s) or all required vaccines. If, in the opinion of the physician, nurse practitioner, or physician assistant issuing the medical exemption, the exemption should be terminated or reviewed at a future date, an expiration date shall be recorded on the certificate of immunization exemption; or

b. A medical exemption may apply when the administration of the required vaccine would violate minimum interval spacing and the exemption shall apply only to an applicant who has not received prior doses of the exempted vaccine. An expiration date, not to exceed 60 calendar days, and the name of the vaccine exempted shall be recorded on the medical certificate of exemption.

7.3(2) A religious exemption may be granted to an applicant if immunization conflicts with a genuine and sincere religious belief. To be valid, a religious certificate of immunization exemption for religious reasons shall contain, at a minimum, the applicant's last name, first name, and date of birth and shall bear the signature of the applicant or, if the applicant is a minor, of the applicant's parent or guardian and shall attest that immunization conflicts with a genuine and sincere religious belief and that the belief is in fact religious and not based merely on philosophical, scientific, moral, personal, or medical opposition to immunizations. Language included on the religious certificate of immunization exemption referencing rule 641—7.3(139A) cannot be altered. Any edits or alterations to the religious certificate of immunization exemption referencing rule 641—7.3(139A) will invalidate the certificate.

7.3(3) Medical and religious exemptions do not apply in times of emergency or epidemic pursuant to Iowa Code section 139A.8.

641—7.4(139A) Required immunizations.

7.4(1) Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements below:

IMMUNIZATION REQUIREMENTS

Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements listed below. If, at any time, the age of the child is between the listed ages, the child must have received the number of doses in the "Total Doses Required" column.

| Institution | Age | Vaccine | Total Doses Required |
|--|--------------------------------------|--|---|
| Licensed Child Care Center | Less than 4 months of age | This is not a recommended administration schedule, but contains the minimum requirements for participation in licensed child care. Routine vaccination begins at 2 months of age. | |
| | 4 months through 5 months of age | Diphtheria/Tetanus/Pertussis | 1 dose |
| | | Polio ¹ | 1 dose |
| | | <i>haemophilus influenzae</i> type B | 1 dose |
| | | Pneumococcal | 1 dose |
| | 6 months through 11 months of age | Diphtheria/Tetanus/Pertussis | 2 doses |
| | | Polio ¹ | 2 doses |
| | | <i>haemophilus influenzae</i> type B | 2 doses |
| | | Pneumococcal | 2 doses |
| | 12 months through 18 months of age | Diphtheria/Tetanus/Pertussis | 3 doses |
| | | Polio ¹ | 2 doses |
| | | <i>haemophilus influenzae</i> type B | 2 doses; or 1 dose received at 15 months of age or older. |
| | | Pneumococcal | 3 doses; or 2 doses if both doses were received at 12 months of age or older. |
| | 19 months through 23 months of age | Diphtheria/Tetanus/Pertussis | 4 doses |
| | | Polio ¹ | 3 doses |
| | | <i>haemophilus influenzae</i> type B | 3 doses if a dose was received on or after 12 months of age; or 2 doses if the first dose was received on or after 12 months of age; or 1 dose if the dose was received at 15 months of age or older. |
| | | Pneumococcal | 4 doses if a dose was received on or after 12 months of age; or 3 doses if 1 or more doses were received on or after 12 months of age; or 2 doses if both doses were received at 12 months of age or older. |
| | | Measles/Rubella | 1 dose; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory. |
| Varicella | | 1 dose; or the applicant has a reliable history of natural disease. | |
| 24 months of age and older | Diphtheria/Tetanus/Pertussis | 4 doses | |
| | Polio ¹ | 3 doses | |
| | <i>haemophilus influenzae</i> type B | 3 doses if a dose was received on or after 12 months of age; or 2 doses if the first dose was received on or after 12 months of age; or 1 dose if the dose was received at 15 months of age or older. Hib vaccine is not required for persons 60 months of age or older. | |
| | Pneumococcal | 4 doses if a dose was received on or after 12 months of age; or 3 doses if 1 or more doses were received on or after 12 months of age; or 2 doses if the first dose was received on or after 12 months of age; or 1 dose if the dose was received on or after 24 months of age. Pneumococcal vaccine is not required for persons 60 months of age or older. | |
| | Measles/Rubella | 1 dose; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory. | |
| | Varicella | 1 dose; or the applicant has a reliable history of natural disease. | |
| Elementary or Secondary School (K-12) | 4 years of age and older | Diphtheria/Tetanus/Pertussis ² | 5 doses with at least 1 dose received on or after 4 years of age; or 4 doses if the fourth dose was received on or after 4 years of age; and 1 dose of tetanus/diphtheria/acellular pertussis-containing vaccine (Tdap) received on or after 10 years of age for applicants in grades 7 and above, regardless of the interval since the last tetanus/diphtheria-containing vaccine. |
| | | Polio ¹ | 4 doses, with at least 1 dose received on or after 4 years of age; or 3 doses if the third dose was received on or after 4 years of age. |
| | | Measles/Rubella | 2 doses; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory. |
| | | Hepatitis B | 3 doses |
| | | Varicella | 2 doses; or the applicant has a reliable history of natural disease. |
| | | Meningococcal (A, C, W, Y) | 1 dose received on or after 10 years of age for applicants in grades 7 through 11; and 2 doses with 1 dose received on or after 16 years of age for applicants in grade 12; or 1 dose for applicants in grade 12 if the dose was received on or after 16 years of age. |

¹ Doses of oral polio vaccine (OPV) administered on or after April 1, 2016, are not valid doses and do not count toward the polio vaccine requirement.

² Applicants 7 through 18 years of age who received the first dose of diphtheria/tetanus/pertussis-containing vaccine at 12 months of age or older should receive a total of 3 doses, with one dose received on or after 4 years of age.

7.4(2) Vaccine doses administered less than or equal to 4 days before the minimum interval or age shall be counted as valid. Doses administered greater than or equal to 5 days earlier than the minimum interval or age shall not be counted as valid doses and shall be repeated as appropriate.

7.4(3) For vaccine administration, the minimum age and intervals recommended by the advisory committee on immunization practices shall be followed.

641—7.5(139A) Required education. An institution of higher education with an on-campus residence hall or dormitory shall provide vaccination information on meningococcal disease to enrolled students on a student health form pursuant to Iowa Code section 139A.26. For purposes of this rule, student health form(s) means a document(s) prepared by an institution of higher education that contains, at a minimum, information on meningococcal disease, vaccination information and any recommendations

issued by the national Centers for Disease Control and Prevention regarding meningococcal disease. The student health form(s) shall also include space for the postsecondary student to indicate whether or not the postsecondary student has received vaccination against meningococcal disease, including, at a minimum, the date of vaccination. The student health form(s) shall also include space for the postsecondary student to indicate whether or not the postsecondary student has received information on meningococcal disease and benefits of vaccine. If a traditional student health form is not utilized by the institution of higher education, any document(s) containing the above information is acceptable.

641—7.6(139A) Proof of immunization.

7.6(1) A valid department certificate of immunization shall be submitted by the applicant or, if the applicant is a minor, by the applicant's parent or guardian to the admitting official of the school or licensed child care center in which the applicant wishes to enroll. To be valid, the certificate shall be the certificate of immunization issued by the department, a computer-generated copy from the immunization registry, or a certificate of immunization which has been approved in writing by the department. The certificate shall contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) administered, the date(s) given, and the signature of a physician, a physician assistant, a nurse, or a certified medical assistant. A faxed copy, photocopy, or electronic copy of the valid certificate is acceptable. The judgment of the adequacy of the applicant's immunization history should be based on records kept by the person signing the certificate of immunization or on that person's personal knowledge of the applicant's immunization history, or comparable immunization records from another person or agency, or an international certificate of vaccination, or the applicant's personal health records. If personal health records are used to make the judgment, the records shall include the vaccine(s) administered and the date given. Persons validating the certificate of immunization are not held responsible for the accuracy of the information used to validate the certificate of immunization if the information is from sources other than their own records or personal knowledge.

7.6(2) Persons wishing to enroll who do not have a valid department certificate of immunization available to submit to the admitting official shall be referred to a physician, a physician assistant, a nurse, or a certified medical assistant to obtain a valid certificate.

641—7.7(139A) Provisional enrollment.

7.7(1) Applicants may be granted provisional enrollment pursuant to Iowa Code section 139A.8. A valid department provisional certificate of immunization shall be submitted by the applicant or, if the applicant is a minor, by the applicant's parent or guardian to the admitting official of the school or licensed child care center in which the applicant wishes to enroll. To qualify for provisional enrollment, applicants shall have received at least one dose of each of the required vaccines or be a transfer student from another school system. A transfer student is an applicant seeking enrollment from one United States elementary or secondary school into another. To be valid, the certificate shall be the certificate of immunization issued by the department, a computer-generated copy from the immunization registry, or a certificate of immunization which has been approved in writing by the department. The certificate shall contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) administered, the date(s) given, the remaining vaccine(s) required, the reason that the applicant qualifies for provisional enrollment, and the signature of a physician, a physician assistant, a nurse, or a certified medical assistant. Persons validating the provisional certificate of immunization are not held responsible for the accuracy of the information used to validate the provisional certificate of immunization if the information is from sources other than their own records or personal knowledge. Persons signing the provisional certificate of immunization shall certify that they have informed the applicant or, if the applicant is a minor, the applicant's parent or guardian of the provisional enrollment requirements.

a. Any applicant seeking provisional enrollment who does not have a valid department provisional certificate of immunization to submit to the admitting official shall be referred to a physician, a physician assistant, a nurse, or a certified medical assistant to obtain a valid certificate.

b. Reserved.

7.7(2) The amount of time allowed for provisional enrollment shall be as soon as medically feasible but shall not exceed 60 calendar days. The period of provisional enrollment shall begin on the date the provisional certificate is signed. The person signing the provisional certificate shall assign an expiration date to the certificate and shall indicate the remaining immunizations required to qualify for a certificate of immunization.

7.7(3) The applicant or parent or guardian shall ensure that the applicant receive the necessary immunizations during the provisional enrollment period and shall submit a certificate of immunization to the admitting official by the end of the provisional enrollment period.

7.7(4) If at the end of the provisional enrollment period the applicant or parent or guardian has not submitted a certificate of immunization, the admitting official shall immediately exclude the applicant from the benefits, activities, and opportunities of the school or licensed child care center until the applicant or parent or guardian submits a valid certificate of immunization.

7.7(5) If at the end of the provisional enrollment period the applicant has not completed the required immunizations due to minimum interval requirements, a new department provisional certificate of immunization shall be submitted to the admitting official. The admitting official must maintain all issued certificates of provisional immunization with the original provisional certificate until the applicant submits a certificate of immunization.

641—7.8(139A) Records and reporting.

7.8(1) It shall be the duty of the admitting official of a licensed child care center or elementary or secondary school to ensure that the admitting official has a valid department certificate of immunization, certificate of immunization exemption, or provisional certificate of immunization on file for each student by the first day of attendance.

a. The admitting official shall keep the certificates on file in the school or licensed child care center in which the student is enrolled and assist the student or parent or guardian in the transfer of the certificate to another school or licensed child care center upon the transfer of the student to another school or licensed child care center.

b. Unless otherwise requested by the applicant, or parent or guardian, the admitting official shall retain the department certificate of immunization, or certificate of immunization exemption, or provisional certificate of immunization for three years commencing upon the transfer or graduation of the applicant or the school may choose to provide the permanent immunization record to the student at time of graduation. Included with the immunization record a letter should state that this is an important document that will be needed by the student for college or employment and should be permanently retained.

7.8(2) It shall be the duty of the local boards of health to audit the department certificates of immunization, certificates of immunization exemption, and provisional certificates of immunization in the schools within their jurisdiction to determine compliance with Iowa Code section 139A.8. The local boards of health shall furnish the department within 60 days of the first official day of school a report of the audit. The report shall be submitted for each school within the local board of health's jurisdiction and shall include the enrollment by grade, and the number of department certificates of immunization, certificates of immunization exemption, and provisional certificates of immunization by grade.

7.8(3) The local board of health and the department shall have the right to have access to the department certificates of immunization, certificates of immunization exemption, and the provisional certificates of immunization of children enrolled in elementary and secondary schools and licensed child care centers within the constraints of the privacy rights of parents and students.

7.8(4) The admitting official of an institution of higher education shall provide to the department by December 1 each year aggregate data regarding compliance with Iowa Code section 139A.26. The data shall be forwarded to the department within 30 days. The data shall include, but not be limited to, the total number of incoming postsecondary freshmen students living in a residence hall or dormitory who have:

- a.* Enrolled in the institution of higher education; and
- b.* Been provided information on meningococcal disease; and

- c. Been immunized with meningococcal vaccine.

641—7.9(139A) Compliance. Applicants not presenting proper evidence of immunization, or exemption, are not entitled to enrollment in a licensed child care center or elementary or secondary school under the provisions of Iowa Code section 139A.8. It shall be the duty of the admitting official to deny enrollment to any applicant who does not submit proper evidence of immunization and to exclude a provisionally enrolled applicant in accordance with this chapter.

641—7.10(22) Statewide registry.

7.10(1) Statewide registry. The department shall maintain a statewide immunization and health screening registry.

7.10(2) Purpose and permitted uses of registry.

a. The registry shall contain immunization and health screening information, including identifying and demographic data, to allow enrolled users to maintain and access a database of immunization and health screening histories for purposes of ensuring patients are fully immunized and screened.

b. The registry may be used to track inventory or utilization of pharmaceutical agents identified by the department to prepare for or respond to an emergency event.

c. Enrolled users shall not use information obtained from the registry to market services to patients or nonpatients, to assist in bill collection services, or to locate or identify patients or nonpatients for any purpose other than those expressly provided in this rule.

d. The registry shall contain health screening data, including screening results and follow-up information.

7.10(3) Release of information to the registry. Enrolled users shall provide immunization and health screening information, including identifying and demographic data, to the registry. Information provided may include, but is not limited to, the following:

- a. Name of patient;
- b. Gender of patient;
- c. Date of birth;
- d. Race;
- e. Ethnicity;
- f. Birth state and birth country;
- g. Address;
- h. Parents' names;
- i. Mother's maiden name;
- j. Type of vaccination administered;
- k. Dose or series number of vaccine;
- l. Date vaccination was administered;
- m. Lot number;
- n. Date of health screening;
- o. Health screening results;
- p. Source of health screening;
- q. Health screening follow-up information;
- r. Patient comments;
- s. Provider name, license, and business address; and
- t. Patient history, including previously unreported doses.

7.10(4) Confidentiality of registry information. Immunization and health screening information, including identifying and demographic data maintained in the registry, is confidential and may not be disclosed except under the following limited circumstances:

- a. The department may release information from the registry to the following:
 - (1) The person or the parent or legal guardian of the person immunized or screened.
 - (2) Enrolled users of the registry who have completed a department enrollment form that specifies the conditions under which the registry can be accessed;

(3) Persons or entities requesting immunization or health screening data in an aggregate form that does not identify an individual either directly or indirectly.

(4) Agencies that complete an agreement with the department which specifies conditions for access to registry data and how that data will be used. Agencies shall not use information obtained from the registry to market services to patients or nonpatients, to assist in bill collection services, or to locate or identify patients or nonpatients for any purposes other than those expressly provided in this rule.

(5) A representative of a state or federal agency, or entity bound by that state or federal agency, to the extent that the information is necessary to perform a legally authorized function of that agency or the department. The state or federal agency is subject to confidentiality regulations that are the same as or more stringent than those in the state of Iowa. State or federal agencies shall not use information obtained from the registry to market services to patients or nonpatients, to assist in bill collection services, or to locate or identify patients or nonpatients for any purposes other than those expressly provided in this rule.

(6) The admitting official of a licensed child care center, elementary school, secondary school, or postsecondary school; or medical or health care providers providing continuity of care.

(7) Users from other states or jurisdictions who have signed and completed enrollment in the state's or jurisdiction's immunization registry.

b. Users shall not release data obtained from the registry except to the person or the parent or legal guardian of the person immunized or screened, admitting officials of licensed child care centers and schools, medical or health care providers providing continuity of care, and other enrolled users of the registry.

7.10(5) *Suspend or terminate access.* The department may suspend or terminate an enrolled user's access consistent with department policy if the user violates this chapter, department enrollment forms, or the IRIS Security and Confidentiality Policy (2021). The department will approve, suspend, terminate, and reinstate user access in accordance with this chapter and department policy.

641—7.11(22) Release of immunization and health screening information.

7.11(1) *Between a physician, physician assistant, nurse, certified medical assistant, pharmacist, or screening provider and the elementary, secondary, or postsecondary school or licensed child care center that the student attends.* A physician, a physician assistant, a nurse, a certified medical assistant, a pharmacist, or a screening provider shall disclose a student's or patient's immunization or health screening information, including the name, date of birth, and demographic information; vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, to an elementary, secondary, or postsecondary school or a licensed child care center upon written or verbal request from the elementary, secondary, or postsecondary school or licensed child care center. Written or verbal permission from a student or parent is not required to release this information to an elementary, secondary, or postsecondary school or licensed child care center that the student attends.

7.11(2) *Among physicians, physician assistants, nurses, certified medical assistants, pharmacists or screening providers.* Immunization or health screening information, including the student's or patient's name, date of birth, and demographic information; vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, shall be provided by a physician, physician assistant, nurse, certified medical assistant, pharmacist, or screening provider to another health care provider without written or verbal permission from the student, parent, guardian or patient.

7.11(3) *Among an elementary school, secondary school, postsecondary school, and licensed child care center that the student attends.* An elementary school, secondary school, postsecondary school, and licensed child care center shall disclose a student's immunization or health screening information, including the student's name, date of birth, and demographic information; vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, to another elementary school, secondary school, postsecondary school, and licensed child care center that the student attends. Written or verbal permission from a student, or if the student is a minor, the student's

parent or guardian, is not required to release this information to an elementary school, secondary school, postsecondary school, and licensed child care center that the student attends.

7.11(4) *Among the department and a physician, physician assistant, nurse, certified medical assistant, pharmacist, screening provider, elementary school, secondary school, postsecondary school, and licensed child care center.* A student's or patient's immunization or health screening information, including name, date of birth, grade, and demographic information; vaccine(s) administered and the month, day and year of administration; and health screening results, clinic source, and location, all in a format specified by the department, shall be disclosed upon written or verbal request among the department, physicians, physician assistants, nurses, certified medical assistants, pharmacists, screening providers, elementary schools, secondary schools, postsecondary schools, and licensed child care centers. Written or verbal permission from a student, patient, parent, or guardian is not required to release this information.

7.11(5) *Among the department and physicians, physician assistants, nurses, resettlement agencies, federal, state, and local government agencies, and certified medical assistants conducting refugee health screenings.* Refugee health screenings shall be disclosed only as indicated in this rule. Immunization or health screening information, including the patient's name, date of birth, and demographic information; the vaccine(s) administered and the month, day, and year of administration; health screening results; and clinic source and location, shall be disclosed upon written or verbal request among the department, physicians, physician assistants, nurses, certified medical assistants, resettlement agencies, federal, state, and local government agencies, or screening providers to another health care provider or the department. Written or verbal permission from the parent, guardian or patient is not required to release this information.

These rules are intended to implement Iowa Code sections 139A.8, 139A.26 and 22.7(2).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 11
“Human Immunodeficiency Virus (HIV) Infection and Acquired Immune Deficiency Syndrome
(AIDS)”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135, 139A, 141A, and 915
State or federal law(s) implemented by the rulemaking: Iowa Code sections 141A.5(2)“c,”
135.11(20), 135.11(22), 139A.33, and 139A.19 and the Public Health Service (PHS) Act as amended
by the Ryan White HIV/AIDS Treatment Extension Act of 2009

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 11 describes HHS procedures and programs related to the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS). This includes reporting of new diagnoses, protocols concerning individuals voluntarily seeking testing, procedures when a health care worker has an occupational exposure, reporting requirements should a positive test be confirmed, and notification and testing requirements when a third party is found to have been exposed.

These rules additionally implement HIV-related training programs and set procedures for eligibility and enrollment in the Ryan White Program. The Ryan White Program is a federally designated program that supports eligible low-income Iowans living with HIV/AIDS with medical and support services and assistance with the cost of medication and health insurance. Under federal legislation, it is the payer of last resort for HIV-related services. The Ryan White Program is not an entitlement program and does not create a right to assistance.

The procedures and programs described in this chapter are designed to provide appropriate individual and community-level protections related to an HIV/AIDS diagnosis. They also provide for access to health care services for people diagnosed and living with HIV/AIDS in Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
 - o Individuals or private insurance companies paying for HIV/AIDS testing.
 - o Employers paying for HIV/AIDS testing for an exposed employee.
 - o The court when ordering testing of a sexual assault victim or convicted or alleged offender.

o Employers providing training to employees concerning occupational exposure to blood or other potentially infectious materials.

- Classes of persons that will benefit from the proposed rulemaking:
 - o Individuals who believe they have been exposed to HIV/AIDS.
 - o Individuals found to have been exposed to HIV/AIDS through a positive confirmed test of a partner.
 - o Pregnant women screened for HIV/AIDS through prenatal care.
 - o Sexual assault victims who may have been exposed to HIV/AIDS.
 - o Individuals diagnosed and living with HIV/AIDS.
 - o Communities in which individuals with HIV/AIDS or those at high risk of exposure live.
 - o Employees who experience occupational exposure to blood or other potentially infectious materials.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Estimated figures below are projections based on past program performance as included in the Red Tape Rule Report for this chapter.

Identified Impacts*

| | SFY 2024 | SFY 2025 | SFY 2026 | SFY 2027 | SFY 2028 | Five-Year Total |
|-----------------------------------|---------------|---------------|---------------|---------------|---------------|-----------------|
| Costs | | | | | | |
| HHS Prev. and Surveillance | \$1,826,753 | \$1,826,753 | \$1,826,753 | \$1,826,753 | \$1,826,753 | \$9,133,765 |
| HIV/AIDS Testing | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| HIV/AIDS Related Training | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| HHS—Ryan White Program | \$22,814,089 | \$22,814,089 | \$22,814,089 | \$22,814,089 | \$22,814,089 | \$114,070,445 |
| Benefits | | | | | | |
| Improved Public Health and Safety | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | Indeterminate | Indeterminate | Indeterminate | Indeterminate | Indeterminate | Indeterminate |

*All monetary figures have been rounded to the nearest thousandth.

- Qualitative description of impact:

Providing access to education, testing, and health care services for individuals believed to have been exposed to HIV/AIDS prevents further spread of the virus, thus protecting public health and safety. Training programs where occupational exposure to blood or other potentially infectious materials may occur further reduce transmission.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs costs for personnel, test kits, prevention supplies, data systems, and contracting with local public health. These costs are reflected in the figure above, labeled as “HHS Prev. and Surveillance.”

The Ryan White Program provides eligible low-income Iowans living with HIV/AIDS with medical and support services and assistance with the cost of medication and health insurance. These costs are

reflected in the figure above as “HHS—Ryan White Program.” Federal funds and 340B Drug Pricing Program rebates support the majority of these assistance dollars.

Additional state agencies are impacted by HIV/AIDS training and testing requirements. Since these obligations are defined in the Iowa Code, and not created in this chapter, any associated costs are not included in this analysis.

- Anticipated effect on state revenues:

No impact identified.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost-benefit analysis above shows a net value of improved public health and safety. HIV-related treatment and support is estimated at \$20,000 to \$50,000 annually for people with HIV. Eliminating the HHS HIV/AIDS programs, or components thereof, would result in a decrease in available education, testing, and treatment around the virus. This may result in increased community spread and a negative impact on public health and safety.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Early intervention for HIV (diagnosis, treatment, social support) is a cost-effective public health intervention. HHS has established parameters for education, testing, and treatment at the level HHS believes necessary to protect public health and safety. A less costly method has not been identified to achieve the purpose of this chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

HHS implements HIV/AIDS programs in accordance with requirements of the Iowa Code and federal regulations. Early intervention for HIV has been found to be cost-effective and reduces costs of more expensive inpatient costs for people with untreated HIV. The Ryan White Program saves the Iowa Medicaid enterprise from costly medical costs for participants with HIV.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 11 and adopt the following new chapter in lieu thereof:

CHAPTER 11
HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION AND ACQUIRED IMMUNE
DEFICIENCY SYNDROME (AIDS)

641—11.1(139A,141A) Definitions.

“*AIDS*” means the same as defined in Iowa Code section 141A.1.

“*AIDS-related condition*” means the same as defined in Iowa Code section 141A.1.

“*Alleged offender*” means the same as defined in Iowa Code section 915.40.

“*Benefits and drug assistance program*” or “*BDAP*” means the Iowa benefits and drug assistance program, a component of the Ryan White program administered by the bureau of HIV, STI, and hepatitis within the department.

“*Blood bank*” means a facility for the collection, processing, or storage of human blood or blood derivatives, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

“*Blood-borne viral hepatitis*” means hepatitis B or hepatitis C.

“*Care provider*” means the same as defined in Iowa Code section 139A.2.

“*CDC*” means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*Certification of a significant exposure report*” means the determination by an authorized infection preventionist, occupational health professional, or other personnel trained in infection control or infectious disease medicine and designated by a facility to review significant exposure reports that the incident described by the exposed care provider meets the definition of a significant exposure as defined in this rule.

“*Confirmed positive test*” means a reactive result or detectable quantity on any HIV-related test, including an antibody test, an antigen test, a culture, a nucleic acid amplification test, or other test or combination of tests, that is considered to be confirmatory according to prevailing medical technology and algorithms or guidance from CDC. When the confirmed positive test involves more than one test, all test results should be included in any reports to the department.

“*Contagious or infectious disease*” means hepatitis in any form, meningococcal disease as defined in these rules, AIDS or HIV as defined in Iowa Code section 141A.1, tuberculosis as defined in these rules, and any other disease determined to be life-threatening to a person exposed to the disease based upon a determination by the state epidemiologist or medical director and in accordance with guidelines of the centers for disease control and prevention of the U.S. Department of Health and Human Services.

“*Department of corrections*” means the Iowa department of corrections.

“*Designated representative*” means a person who is designated by a department, agency, division, or service organization to act on behalf of the exposed care provider as a liaison with the facility that received the source patient when the exposure occurred in the field or during patient transport.

“*Director of a plasma center, blood bank, clinical laboratory, organ procurement organization, or public health laboratory*” means the person responsible for direction and operation of the facility, the medical director, or the person designated by the director or medical director to ensure compliance with applicable regulations and requirements.

“*Emergency medical services personnel*” means “emergency medical care provider” as defined in rule 641—131.1(147A).

“*Exposure*” means the same as defined in Iowa Code section 139A.2.

“*HBV*” means hepatitis B virus.

“*Health care facility*” means the same as defined in Iowa Code section 139A.2.

“*Health care provider*” means the same as defined in Iowa Code section 141A.1.

“*Health facility*” means the same as defined in Iowa Code section 141A.1.

“*HIV*” means the same as defined in Iowa Code section 141A.1.

“*HIV infection*” means having acquired the human immunodeficiency virus.

“*HIV-related test*” means the same as defined in Iowa Code section 141A.1.

“*Home health services*” means health care services provided by a care provider in a patient’s home or other residence.

“*Identifiable third party*” means a sexual partner of or a person who shares drug injecting equipment with a person who has been diagnosed with HIV infection.

“*Infectious bodily fluids*” means bodily fluids capable of transmitting HIV as listed in “Updated U.S. Public Health Service guidelines for the management of occupational exposures to HIV and recommendations for postexposure prophylaxis,” dated September 25, 2013, and updated May 23, 2018, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, on their website. To prevent HIV and blood-borne viral hepatitis disease transmission, this reference indicates that standard precautions should be followed for exposure to the following infectious bodily fluids: blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, vaginal secretions, and saliva contaminated with blood. HIV and blood-borne viral hepatitis disease transmission has not occurred from feces, nasal secretions, sputum, sweat, tears, urine, vomitus, and saliva when it is not contaminated with blood.

“*Laboratory*” means a clinical or public health laboratory, a plasma center, or a blood bank inside or outside the boundaries of Iowa.

“*Meningococcal disease*” means acute infectious bacterial meningococcal infection presenting as invasive disease characterized by one or more clinical syndromes including bacteremia, sepsis, or meningitis. “Meningococcal disease” does not include nasopharyngeal colonization by *Neisseria meningitidis*.

“*Payer of last resort*” means a requirement to coordinate services and seek payment from all other sources before Ryan White program funds are used.

“*Physician*” means a person currently licensed pursuant to Iowa Code chapter 148.

“*Physician assistant*” means a person currently licensed under Iowa Code chapter 148C.

“*Plasma center*” means a facility that conducts plasmapheresis.

“*Plasmapheresis*” means the removal of blood from a human being to obtain plasma with the subsequent reinfusion of the remaining formed elements into the donor, but excludes such a procedure performed for the purpose of improving the health of the donor.

“*Public health laboratory*” means a laboratory operated by an agency of city, county or state government for the purpose of supporting disease control activities.

“*Respite care services*” means health care services provided by a care provider in a patient’s home or other residence on a short-term, temporary basis as relief to those who are caring for family members.

“*Ryan White program*” means the Ryan White part B program administered by the bureau of HIV, STI, and hepatitis within the department that provides case management, behavioral health, other supportive services, and assistance with the costs of housing, health insurance, and treatment medications for eligible low-income individuals diagnosed with HIV.

“*Sexually transmitted disease or infection*” means “sexually transmitted disease or infection” as defined in rule 641—1.1(139A).

“*Significant exposure*” means a situation in which there is a risk of contracting disease through exposure to a patient’s infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by CDC. Exposure includes contact with blood or other infectious bodily fluids to which standard precautions apply through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membranes during the performance of normal job duties. Significant exposures include:

1. Transmission of blood, bloody fluids, or other infectious bodily fluids of the source patient onto a mucous membrane (mouth, nose, or eyes) of the care provider.
2. Transmission of blood, bloody fluids, or other infectious bodily fluids of the source patient onto an open wound or lesion with significant breakdown in the skin barrier, including a needle puncture with a needle contaminated with blood, bloody fluids, or other infectious bodily fluids.

“*Significant exposure report*” means the Report of Exposure to HIV or Other Infectious Disease form provided by the department. This is the only form authorized to be used to document a significant

exposure to infectious bodily fluids such that the source patient is deemed to consent to a test to determine if the patient has a contagious or infectious disease, and is deemed to consent to notification of the care provider of the results of the test, pursuant to Iowa Code section 139A.19.

“Tuberculosis” means infectious tuberculosis as defined in rule 641—1.1(139A).

641—11.2(141A) HIV testing—obtaining consent—voluntary HIV-related tests for adults who are not pregnant.

11.2(1) Prior to conducting a voluntary HIV-related test on an adult, the health care provider requesting the test shall provide information to the subject of the test concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction.

11.2(2) Patient consent for testing must be obtained as detailed in Iowa Code section 141A.6.

11.2(3) Once an adult has been informed of a confirmed positive HIV-related test, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of the adult with HIV infection.

641—11.3(139A,141A) HIV testing—obtaining consent—voluntary HIV-related tests for minors who are not pregnant.

11.3(1) Patient consent for testing must be obtained as detailed in Iowa Code section 141A.6. A minor shall have the legal capacity to act and give consent pursuant to Iowa Code section 139A.35.

11.3(2) Prior to conducting a voluntary HIV-related test on a minor, the health care provider requesting the test shall provide information to the subject of the test concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction.

11.3(3) A minor shall be informed prior to testing of requirements for health facilities to inform the minor’s legal guardian of a positive test result pursuant to Iowa Code section 141A.7.

11.3(4) Prior to the test, a minor shall give written consent for performance of the HIV-related test and to the notification of the legal guardian should the test be confirmed as positive.

11.3(5) Once a minor has been informed of a confirmed positive HIV-related test and the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a minor with HIV infection.

641—11.4(141A) HIV testing—obtaining consent—voluntary HIV-related tests for pregnant women.

11.4(1) Health care providers that offer prenatal care to women shall provide HIV testing to all pregnant women as described in Iowa Code section 141A.4. No written or oral consent shall be required.

11.4(2) The testing shall occur as early as possible during each pregnancy.

11.4(3) The health care provider requesting the test shall make information available about HIV prevention, risk reduction, and treatment to all pregnant women pursuant to Iowa Code section 141A.4.

11.4(4) A pregnant woman who is a minor shall be informed prior to testing of requirements for health facilities to inform the minor’s legal guardian of a positive test result as described in Iowa Code section 141A.7.

11.4(5) If a pregnant woman declines the test, the decision shall be documented as described in Iowa Code section 141A.4. A health care provider shall encourage women who decline the test early in prenatal care to be tested at a subsequent visit.

11.4(6) Once a pregnant woman has been informed of a confirmed positive HIV-related test and, if the pregnant woman is a minor, the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a pregnant woman with HIV infection.

641—11.5(141A) HIV test results—posttest counseling.

11.5(1) Upon informing the subject of an HIV-related test of a confirmed positive test result, the health care provider who requested the test or other designated personnel shall initiate counseling

concerning the emotional and physical health effects of HIV infection as described in Iowa Code section 141A.7.

641—11.6(141A) Reporting of diagnoses and HIV-related tests, events, and conditions to the department.

11.6(1) The following constitute reportable events related to HIV infection:

- a.* A test result indicating HIV infection, including:
 - (1) Confirmed positive results on any HIV-related test or combination of tests, including antibody tests, antigen tests, cultures, and nucleic acid amplification tests.
 - (2) A positive result or report of a detectable quantity on any other HIV detection (non-antibody) tests, and results of all viral loads, including nondetectable levels.
 - (3) Results of genotypic resistance assays.
- b.* AIDS and AIDS-related conditions, including all levels of CD4+ T-lymphocyte counts.
- c.* Birth of an infant to an HIV-infected mother (perinatal exposure) or any (positive, negative, or undetectable) non-antibody detection test (antigen test, viral culture, viral load, or qualitative nucleic acid amplification test) on an infant 18 months of age or younger.
- d.* Death resulting from an AIDS-related condition, or death of a person with HIV infection.

11.6(2) Reportable events as described in this rule shall be reported to the department pursuant to Iowa Code section 141A.6. The following reporting requirements are in addition to those described in Iowa Code section 141A.6.

- a.* Within seven days of the receipt of a person's confirmed positive test result indicating HIV infection, the director of a plasma center, organ procurement organization, or public health laboratory that performed the test or that requested the confirmatory test shall make a report to the department.

- b.* Within seven days of the birth of an infant to a mother diagnosed with HIV or a receipt of a laboratory result (positive, negative, or undetectable) of a non-antibody detection test (antigen test, viral culture, viral load, or qualitative nucleic acid amplification test) on an infant 18 months of age or younger, the attending physician shall make a report to the department.

11.6(3) The report shall be made on a form provided by the department that includes those form fields described in Iowa Code section 141A.6 unless approval from the department has been obtained for use of other reporting formats.

11.6(4) All persons who experience a reportable event while receiving services in the state, regardless of state of residence, shall be reported.

Rules 641—11.1(139A,141A) to 641—11.6(141A) are intended to implement Iowa Code sections 139A.35, 141A.4, 141A.6, and 141A.7.

641—11.7(141A) Confidentiality of information. In addition to the entities described in Iowa Code section 141A.9, medical information secured pursuant to Iowa Code section 141A.9(1) may be shared between employees and agents of the department and employees and agents of tribes and tribal public health authorities that have a need for the information in the duties related to HIV prevention, disease surveillance, or care of persons with HIV, only as necessary to administer the program for which the information is collected or to administer a program in the tribe or tribal public health authority. Confidential information transferred to other persons or entities under this rule shall continue to maintain its confidential status as described in Iowa Code section 141A.9.

This rule is intended to implement Iowa Code section 141A.9.

641—11.8(135) HIV and AIDS training programs where occupational exposure to blood or other potentially infectious materials may occur.

11.8(1) *Personnel covered by the rule.*

- a.* Nonemergency personnel. All supervisory and patient care personnel of any agency listed below:

- (1) A licensed hospice,

(2) A homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or

(3) An agency which provides respite care services.

b. Emergency and law enforcement personnel. All personnel from the following agencies:

(1) Emergency medical services.

(2) Fire services.

(3) Law enforcement.

11.8(2) *Topics covered.* Training programs must address the following topics, consistent with standards from the Occupational Safety and Health Administration of the U.S. Department of Labor:

a. Symptoms and modes of transmission of blood-borne diseases, including human immunodeficiency virus and viral hepatitis,

b. Location and handling of personal protective equipment,

c. Information on the hepatitis B vaccine, and

d. Follow-up procedures in the event of an exposure.

11.8(3) *Timing of training.* Training must occur before an initial assignment of tasks where occupational exposure to blood or other potentially infectious materials may take place and at least annually thereafter.

This rule is intended to implement Iowa Code section 135.11.

641—11.9(139A,141A) Partner notification program.

11.9(1) The department will maintain a partner notification program for persons known to have tested positive for sexually transmitted diseases or infections pursuant to the procedures described in Iowa Code sections 141A.5 and 139A.33.

11.9(2) Services provided include, but are not limited to, counseling about the disease or infection, risk reduction techniques, linkage to medical care and treatment, assessment and referral to social and prevention services, and elicitation of exposed partners' names and contact information for referral to testing, as described in the Partner Services Program Manual dated December 2023, adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the program. The manual is updated annually. A copy of the manual is available on the department website.

11.9(3) The department may delegate its partner notification duties under this rule for persons who have tested positive for HIV or other sexually transmitted diseases to a local health authority or a physician or other health care provider unless the authority or physician or other health care provider refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

641—11.10(141A) Direct notification of an identifiable third party by a physician, physician assistant or the department.

11.10(1) Direct notification shall be used when a person diagnosed with HIV is having continuing contact with a sexual or needle-sharing partner who is unaware of the person's infection and when both of the following situations exist:

a. A physician or physician assistant for the person diagnosed with HIV is of the good-faith opinion that the nature of the continuing contact through sexual intercourse or the sharing of drug injecting equipment poses an imminent danger of HIV transmission to the third party.

b. When the physician or physician assistant believes in good faith that the person diagnosed with HIV, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

11.10(2) The department or a physician or a physician assistant may reveal the identity of a person diagnosed with HIV pursuant to this rule only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this rule shall be made confidentially. Nothing in this rule shall be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person diagnosed with HIV.

11.10(3) When the physician or physician assistant is of the good-faith opinion and belief that third-party notification should be performed, notification of a person pursuant to this rule shall be made:

- a. Directly by the physician or physician assistant, or
- b. By the department at the request of the physician or physician assistant.

11.10(4) Notification by the physician or physician assistant. Prior to notification of a third party by the physician or physician assistant of a person diagnosed with HIV, the physician or physician assistant shall make reasonable efforts to inform, in writing, the person diagnosed with HIV. The written information shall state that, due to the nature of the person's continuing contact through sexual intercourse or the sharing of drug injecting equipment with the third party and the physician's or physician assistant's belief that the person diagnosed with HIV, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician or physician assistant is forced to take action to provide notification to the third party. The physician or physician assistant, when reasonably possible, shall provide the following information to the person diagnosed with HIV:

- a. The nature of the disclosure and the reason for the disclosure.
- b. The anticipated date of disclosure.
- c. The name of the party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the person diagnosed with HIV shall be deemed satisfied when the physician or physician assistant delivers the written notice in person or directs a written notice to the diagnosed person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

11.10(5) When performed by the diagnosed person's physician or physician assistant, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the physician or physician assistant at the earliest opportunity to discuss an important health matter. The nature of the health matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.10(6) Notification by the department.

a. The physician or physician assistant attending the person diagnosed with HIV shall provide by telephone to the department any relevant information provided by the person diagnosed with HIV regarding any party with whom the person diagnosed with HIV has had sexual relations or has shared drug injecting equipment. The information may include the third party's name, address, telephone number, and any other locating information known to the physician or physician assistant. The department shall use the information in accordance with procedures established for the voluntary partner notification program.

b. Notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the department representative. The nature of the matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.10(7) Confidentiality. The physician or physician assistant of the person diagnosed with HIV and the department shall protect the confidentiality of the third party and the person diagnosed with HIV. The identity of the person diagnosed with HIV shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to HIV. If the identity of the person diagnosed with HIV is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person diagnosed with HIV has been disclosed to you. The confidentiality of this information is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

11.10(8) Immunity. A health care provider attending a person diagnosed with HIV has no duty to disclose to or to warn third parties of the dangers of exposure to HIV through contact with the person diagnosed with HIV and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of the person diagnosed with HIV.

Rules 641—11.9(139A,141A) to 641—11.10(141A) are intended to implement Iowa Code sections 139A.33 and 141A.5.

641—11.11(139A,141A) Care provider notification upon exposure to contagious or infectious diseases—exposures in nonclinical settings.

11.11(1) If a care provider sustains a significant exposure from a patient while rendering health care or other services, other than home-health or respite care services, outside of a health care facility or hospital, the care provider shall file a significant exposure report as soon as reasonably possible following the exposure. When the exposure occurred outside a clinical setting, a care provider who has sustained a significant exposure should file this report with the infection control, occupational health, or other designated office of the facility to which the patient was transported.

11.11(2) The source patient to whom the care provider was exposed is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission of a significant exposure report and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, the source patient shall be notified that an exposure has occurred and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source patient is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code section 141A.7(3).

11.11(3) Hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures pursuant to Iowa Code section 139A.19. In addition to those policies and procedures required by Iowa Code section 139A.19, hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to the source patient when the source patient is delivered to the facility and the exposure occurred prior to the delivery.

11.11(4) The hospital, clinic, or other health care facility to whom the source patient is delivered shall conduct the test. If the source patient is delivered to an institution administered by the department of corrections, the test shall be conducted by the staff physician of the institution. If the source patient is delivered to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. If the source patient was deemed to consent upon certification of a significant exposure report, the sample and test results shall only be identified by a number.

11.11(5) If a test result is positive, the hospital, clinic, or other health care facility, or other person performing the test shall notify the source patient and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The report to the department shall include the name of the source patient.

11.11(6) If a source patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health care facility, or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the source patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health facility, or other person performing the test shall notify the legal guardian of the minor.

11.11(7) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the source

patient has a contagious or infectious disease. The notification shall not include the name of the source patient unless the patient consents. If the care provider who sustained a significant exposure determines the identity of a source patient who has been diagnosed or confirmed as having a contagious or infectious disease, the identity of the source patient shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the source patient.

11.11(8) This rule does not preclude a hospital, clinic, other health care facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health care facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health care facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a source patient's name, unless the patient consents.

11.11(9) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.11(10) The significant exposure report form is a confidential record pursuant to Iowa Code section 141A.9.

641—11.12(139A,141A) Care provider notification upon exposure to contagious or infectious diseases—exposures in clinical settings.

11.12(1) If a care provider sustains a significant exposure from a patient while rendering health care services or other services within a hospital, clinic, or other health care facility, or while delivering home-health or respite care services, the care provider shall file a report as soon as reasonably possible following the exposure. A care provider who has sustained a significant exposure should file the report with the infection control, occupational health, or other office designated by the facility in which the exposure occurred, or by the facility which has oversight for the delivery of home-health or respite care services.

a. If a general consent form was signed and in effect at the time of the significant exposure and the source patient is an adult, a significant exposure report form shall not be required to document the significant exposure. The health care facility or hospital may use an employee incident report or other similar form for this purpose. The source patient to whom the care provider was exposed is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission and review of an employee incident report and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, a source patient shall be notified that an exposure has occurred and shall be told which specific tests are being performed. Prior to conducting an HIV-related test, the health care facility or hospital shall provide information to the source patient concerning testing and a means of obtaining additional information regarding HIV infection and risk reduction pursuant to Iowa Code section 141A.6.

b. If no consent form was signed or in effect at the time of the exposure, or if the source patient is a minor, the source patient is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test upon submission of a significant exposure report form and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. Source patients shall be notified that an exposure has occurred and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source patient is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code section 141A.7(3).

11.12(2) Hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms or other employee incident report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to a patient during the admission, care, or treatment of the patient at the facility, or while delivering home-health or respite care services.

11.12(3) The hospital, clinic, or other health care facility where exposure occurred or which has oversight for the delivery of home-health or respite care services shall conduct the test. If a general consent form was signed and in effect and the source patient is an adult, the sample and test results shall be identified by name. If the source patient was deemed to consent to a test and to notification of the care provider upon certification of a significant exposure report pursuant to these rules because no general consent was signed and in effect at the time of the exposure or because the source patient is a minor, the sample and test results shall be identified only by a number.

11.12(4) If a test result is positive, the hospital, clinic, or other health care facility or other person performing the test shall notify the source patient and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The reports to the department shall include the name of the source patient.

11.12(5) If a source patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health care facility or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the source patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health care facility or other person performing the test shall notify the legal guardian of the minor.

11.12(6) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the source patient has a contagious or infectious disease.

11.12(7) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.12(8) The significant exposure report form is a confidential record pursuant to Iowa Code section 141A.9.

Rules 641—11.11(139A,141A) to 641—11.12(139A,141A) are intended to implement Iowa Code section 139A.19.

641—11.13(915) Testing, reporting, and counseling of convicted of alleged sexual assault assailants.

11.13(1) Prior to ordering an HIV-related test on a convicted or alleged offender pursuant to Iowa Code sections 915.40 through 915.43, the physician or practitioner shall provide information to the subject of the test concerning testing and where to obtain additional information on HIV transmission and risk reduction, pursuant to Iowa Code section 141A.6. The department may be contacted for brochures that may assist in meeting the requirements of Iowa Code section 141A.6.

11.13(2) At any time that the subject of an HIV-related test is informed of confirmed positive test results, the physician or other practitioner who ordered the test shall initiate counseling concerning the emotional and physical health effects of HIV infection, as required under Iowa Code section 141A.7, and shall make any required reports to the department pursuant to Iowa Code section 141A.6.

a. The physician or other practitioner shall encourage a person diagnosed with HIV to participate in the voluntary partner notification program pursuant to rule 641—11.9(139A,141A).

b. The physician or other practitioner may provide to the department any relevant information provided by the person diagnosed with HIV regarding any party with whom the person has had sexual relations or has shared drug injecting equipment.

This rule is intended to implement Iowa Code section 135.11(22).

641—11.14(141A) Ryan White program.

11.14(1) *General purpose and incorporation.* The Ryan White program is a state-administered program that provides support services and assistance with the costs of health insurance and treatment medications for eligible low-income individuals diagnosed with HIV when adequate state and federal funding is available for administration of the program.

a. The program is authorized under Part B of Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the benefits and drug assistance program, be the payer of last resort for HIV-related services. The Ryan White program is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to the program, the department reserves the right to close enrollment, cease to provide specific services, or alter eligibility criteria until such time that funding is again sufficient.

b. The Ryan White program will be administered in accordance with the Ryan White Program Manual dated December 2023, adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the program. The manual is updated annually. A copy of the manual is available at the department website.

c. The benefits and drug assistance program will be administered in accordance with the Benefits and Drug Assistance Program Manual dated December 2023, adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the program. The manual is updated annually. A copy of the manual is available at the department website.

11.14(2) *Collaboration with Iowa Medicaid.* To ensure that the Ryan White program is the payer of last resort and to maximize the efficiency and effectiveness of HIV-related prevention and care services, Iowa Medicaid shall grant the department access to client information for persons enrolled in Medicaid.

11.14(3) *Confidentiality.* Applications, assessments, and all other client-level information received or maintained by the department in connection with the Ryan White program shall be considered confidential information in accordance with Iowa Code section 141A.9.

This rule is intended to implement Iowa Code section 141A.3.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 22
“Practice of Tattooing”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 10A.531 as enacted by 2023 Iowa Acts, Senate File 514 (formerly Iowa Code section 135.37)

State or federal law(s) implemented by the rulemaking: Iowa Code section 10A.531 as transferred by 2023 Iowa Acts, Senate File 514 (formerly Iowa Code section 135.37); Iowa Code chapter 17A; and Executive Order 10 (January 10, 2023)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of 641—Chapter 22, “Practice of Tattooing.” This rulemaking implements Iowa Code section 10A.531 as transferred by 2023 Iowa Acts, Senate File 514 (formerly Iowa Code section 135.37), “Tattooing—Permit Requirement—Penalty,” and Iowa Code chapter 17A in accordance with the goals and directives of Executive Order 10 (January 10, 2023).

Iowa Code section 10A.531 provides that a “person shall not own, control and lease, act as an agent for, conduct, manage, or operate an establishment to practice the art of tattooing or engage in the practice of tattooing without first applying for and receiving a permit from the department [of inspections, appeals, and licensing].” The Department is required to adopt rules “pursuant to chapter 17A and establish and collect all fees necessary to administer [Iowa Code section 10A.531],” and “[e]stablish minimum safety and sanitation criteria for the operation of tattooing establishments.”

The proposed rules establish definitions; general provisions related to licensing, including permissible zoning and annual inspections; sanitation and infection control standards; equipment use and sanitation requirements; and proper tattooing procedures in order to prevent the spread of infection and disease. The proposed rules also provide various types of permits, including tattoo establishment permits, tattoo artist permits, temporary establishment permits, and mobile tattoo unit permits, and fees associated therewith. The goal of the multiple types of permits is to ensure the operators identify and control for public health hazards while accommodating variations in specific physical facilities depending on the scope or type of each operation. Finally, the proposed rules provide for tattoo inspector qualifications, enforcement procedures, and procedures for contesting adverse action.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Costs associated with this proposed chapter are incurred by the tattoo establishments and tattoo artists in the course of obtaining and maintaining their permits. Costs are also incurred by the agency in administering the chapter.

- Classes of persons that will benefit from the proposed rulemaking:

Consumers who utilize tattoo services benefit from these rules. These rules also benefit home food processing establishment license holders in that they provide clear, simple, and effective food safety guidelines. Tattoo artists and establishments benefit from clear and consistent requirements and qualifications for establishments and artists.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Costs associated with this proposed chapter are incurred by the tattoo establishments and tattoo artists in the course of obtaining and maintaining their permits. Permit and inspection fees are incurred to defray the costs of the program in accordance with Iowa Code section 10A.531. These fees range from \$75 for a tattoo artist to \$100 for a tattoo establishment, and a temporary tattoo establishment fee based on the number of participating artists ranges from \$100 for 10 artists to \$300 for more than 100 artists.

The education requirements ensure that the individuals are trained and refreshed on blood-borne pathogens and first aid. These costs are relatively minor when compared to the need to protect the artist, the artist's patrons and the public. Both courses are available online through the Red Cross for \$35 and \$37, respectively. Notably, other jurisdictions require much more intensive education courses or training requirements, including 1,200 training hours (Kansas) and 200 required practice hours under a licensed supervisor (Minnesota).

- Qualitative description of impact:

The Legislature directed the Department to establish and collect all fees necessary to administer Iowa Code section 10A.531 and establish minimum safety and sanitation criteria for the operation of tattooing establishments. The safety and sanitation standards proposed herein ensure safety for both the licensee and the consumer, including the particular mitigation of risks from blood-borne pathogens. The proposed rules have a solid foundation in health and safety and provide for operational flexibility, depending on the particular type of business and its needs.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the costs of personnel utilized to process permits or conduct inspections, or to contract for any such work. There is one contract employee and one vacant FTE position to process the permits, coordinate with the local inspectors, and administer the program. There is 1.0 full-time equivalent (FTE) position that includes tattoo inspection duties in Polk County. There is also a cost for the database that houses all of the information needed for permitting tattoo artists and establishments.

- Anticipated effect on state revenues:

The Department licenses approximately 1,800 individuals and businesses under current chapter 641—Chapter 22. In FY 2022, the Department collected \$170,300 in permit and inspection fees. Expenditures specific to this program in FY 2022 were \$117,399.

Notably, permit and inspection fees are incurred to defray the costs of the program in accordance with Iowa Code section 10A.531.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa Code section 10A.531 prohibits any person from owning, controlling, leasing, acting as an agent for, conducting, managing, or operating an establishment to practice the art of tattooing or engaging in the practice of tattooing without first applying for and receiving a permit from the Department. It also requires the Department to establish minimum safety and sanitation criteria for the operation of tattooing establishments. Inaction by the Department is not permitted since establishing rules setting fees and establishing minimum safety and sanitation criteria is mandated by Iowa Code section 10A.531.

Establishing minimum qualifications for tattoo artists and establishments and the mitigation of blood-borne pathogen contamination during tattooing is an important benefit for the consumers who utilize tattoo services and the public health in general. These proposed rules also benefit tattoo license holders in that the rules provide clear, simple, and effective safety guidelines. The safety and sanitation criteria that the Department has promulgated are reasonable and appropriate for the protection of the public health and safety, while being reasonable and affordable for individuals engaging in the practice of tattooing.

With respect to fees, specifically, neighboring states have similar or increased fee requirements as set forth above. The fees established by the proposed rules, which are identical to current fees, range from \$75 for a tattoo artist to \$100 for a tattoo establishment, and a temporary tattoo establishment fee based on the number of participating artists ranges from \$100 for 10 artists to \$300 for more than 100 artists. In Nebraska, the initial and renewal fees for tattoo artists are \$95 and \$118, respectively, and are \$150 for body art facilities, with a \$50 reinspection fee. In Minnesota, the body art establishment license fee is \$1,500, and the body art technician license is \$420. Iowa's fees established are appropriate in light of program needs and in comparison to surrounding jurisdictions.

Neighboring states also have similar or increased training and education requirements. Furthermore, in the development of the rules the Department was cognizant of accommodating variations in specific physical facilities depending on the scope or type of each operation while maintaining necessary standards to ensure the operators identify and control for public health hazards and the health and safety of patrons. In addition to protecting public health, the rules have been edited and written in a simple manner that is easy for the public to understand. The benefits that would be achieved justify the costs, and the approach used was the least restrictive approach identified to accomplish the benefit.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Department has not identified any less costly or less intrusive methods to achieve the purpose of this proposed rulemaking. The Department has simplified the proposed rules from those in current existence and thoroughly reviewed each of the substantive requirements affecting sanitation, contamination, and the like to ensure that all standards repromulgated are effective in the most economically efficient manner for the licensee.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

See answer to Question 5. No alternative methods were considered beyond ensuring only appropriate requirements were repromulgated.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

As set forth above, the rules proposed are believed to be the least costly or least intrusive methods to achieve the purpose of this rulemaking and implement the Department’s statutory duties. If a licensee subject to this chapter is a small business and has identified a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department’s established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
PRACTICE OF TATTOOING

641—22.1 Reserved.

641—22.2(10A) Definitions. For the purpose of these rules, the following definitions apply:

“*Aftercare*” means written instructions given to a client, specific to the procedures rendered, on care for the tattoo and surrounding area and guidance on when to seek medical treatment.

“*Department*” means the same as Iowa Code section 135.61(5).

“*Director*” means the same as Iowa Code section 135.1(1).

“*Disinfectant*” means a U.S. Environmental Protection Agency (EPA)-registered antimicrobial product that is applied to surfaces to destroy microorganisms that are living on the surface but not necessarily bacterial spores.

“*Imminent health threat*” means a condition or conditions that exist in a tattoo establishment and needs immediate action to prevent endangering the health of people.

“*Impervious*” means nonporous, impenetrable, smooth, and washable.

“*Inspection agency*” means the department or a city, county or district board of health that has executed an agreement with the department to inspect tattoo establishments and enforce these rules. The authority of a city, county or district board of health is limited to the geographic area defined in the agreement executed with the department. Within the defined geographic area, the city, county or district board of health is the “local inspection agency.”

“*Mobile tattoo unit*” means a mobile establishment or unit that is self-propelled or otherwise movable from place to place; is self-sufficient for utilities such as gas, water, electricity and liquid waste disposal; and operates at a fixed location where a permitted artist performs tattooing procedures for no more than 14 days in conjunction with a single event.

“*Residential dwelling*” is a place or structure intended to be occupied as a residence.

“*Single use*” means intended for one-time use and disposed of after use on a client. Single-use products or items include cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, disposable razors, tattoo needles, scalpel blades, stencils, ink cups, and protective gloves. Cloth towels and linens are not “single use” and are barred.

“*Sterilization*” means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores that demonstrate tuberculocidal activity.

“*Tattoo artist*” means any person, including a permanent color technologist, engaged in the practice of tattooing.

“*Tattoo establishment*” means the building or portion of the building designated by the owner where tattooing is practiced.

“*Tattooing*” means to puncture the skin of a person with a needle and insert indelible permanent colors through the puncture to leave permanent marks or designs. “Tattooing” includes permanent color technology that is the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into the dermis portion of the skin so as to form indelible marks for cosmetic purposes. “Tattooing” does not include applying a tattoo for radiological purposes.

“*Temporary establishment permit*” means a permit issued by the department to perform tattoo procedures at a temporary event.

“*Temporary event*” means any place or premises operating at a fixed location where a tattoo artist performs tattooing procedures for no more than 14 days consecutively in conjunction with a single event or celebration to which the general public is invited.

641—22.3(10A) General provisions.

22.3(1) Tattoo artists and tattoo establishments that fail to meet the criteria of Iowa Code section 135.37 or these rules are guilty of a serious misdemeanor.

22.3(2) Compliance with Iowa Code section 135.37 and these rules does not exempt tattoo artists and tattoo establishments from other applicable state or local laws.

22.3(3) Tattooing may only be practiced in facilities that have applied for and received a tattoo establishment permit pursuant to Iowa Code section 135.37.

22.3(4) Notwithstanding local zoning codes, where zoning codes exist, tattooing shall not be practiced in a residential dwelling, inclusive of an attached garage. New tattoo establishments must be in commercial buildings where zoning ordinances exist. A waiver will be granted to any tattoo establishment in a residential dwelling if it has been operating continuously since being granted a permit prior to January 1, 2010.

22.3(5) Tattoo establishments are inspected annually.

641—22.4(10A) Sanitation and infection control. Tattoo establishments shall comply with the following:

22.4(1) Tables, chairs, and other general-use equipment in the tattoo area is constructed of impervious and easily cleanable material.

22.4(2) A sink for hand washing supplied with potable hot and cold running water under pressure to a mixing-type faucet is easily accessible in the tattooing area. Hand-washing facilities are supplied with liquid soap and single-use towels or hand dryer.

22.4(3) Easily accessible toilet facilities with a sink for hand washing are available for employee use and patron use.

22.4(4) The tattoo establishment has an area of at least 300 square feet and is adequately lighted and ventilated.

22.4(5) Floors in the tattoo area are finished with an impervious, washable surface.

22.4(6) The entire premises and all facilities used in connection therewith are maintained in a clean, sanitary, vermin-free condition and in good repair.

22.4(7) All refuse is stored in rigid containers with plastic liners that are emptied at least once each business day.

22.4(8) Closed cabinets or containers are exclusively used for the storage of instruments, dyes, pigments, stencils, tattoo machines, and other equipment.

22.4(9) Smoking is not allowed pursuant to Iowa Code chapter 142D.

22.4(10) Consumption of food or drink is not allowed in the tattoo area.

22.4(11) Intoxicating beverages or controlled substances will not be used, consumed, served, possessed, or distributed on the establishment’s premises.

22.4(12) Tattoo artists not currently permitted in the state of Iowa will not tattoo in the establishment.

22.4(13) No animals, except service animals, are permitted in a tattoo establishment. Aquariums containing fish are allowed in waiting rooms and non-tattoo areas.

641—22.5(10A) Equipment. Tattoo establishments shall maintain equipment in a clean and sanitary condition and comply with the following:

22.5(1) Cups to hold ink or dye are for single-patron use. Any ink or dye, once dispensed into an ink cup, is disposed of immediately following use.

22.5(2) Any dye or ink in which needles were dipped is not used on another person.

22.5(3) All tubes, tips and grips used for the tattoo procedure that are not sterile, not for single-patron use, and not disposable are physically cleaned with a detergent according to manufacturers' recommendations and then steam-sterilized or dry-heat sterilized before use on another person. Steam sterilization is at 250 degrees Fahrenheit (121 degrees Celsius) for 15 minutes at a minimum pressure of 15 pounds per square inch. Dry-heat sterilization is at 350 degrees Fahrenheit (170 degrees Celsius) for one hour. Steam sterilization is preferred.

22.5(4) All instruments needing sterilization are sterilized on site. All instruments to be sterilized are placed in closed pouches after sterilization is complete. The pouches are dated effective for 30 days, after which the instruments are resterilized and the pouches redated.

22.5(5) Sterilizers are monitored monthly for spores of *Bacillus subtilis*, and records of results are maintained for three years. Written procedures to follow in the event of positive spore tests are maintained and implemented, including:

a. In the event of a positive spore test, materials processed in that sterilizer, dating from the sterilization cycle having the positive biological indicator to the next cycle showing satisfactory biologic indicator challenge results, are considered nonsterile and are reprocessed before being used.

b. A sterilizer that has received a positive spore test is immediately removed from service.

c. Prior to putting a sterilizer that has received a positive spore test back into service, the owner ensures that there is evidence of one negative spore test.

d. The owner notifies the inspection agency of a positive spore test within 24 hours of receiving the test result.

22.5(6) Establishments are equipped with a puncture-resistant, leakproof container designated for disposal of used needles and other sharps. The container is red and labeled with the "biohazard" symbol and is closeable for handling, storage, transportation, and disposal. A written plan for disposal is maintained in the establishment.

22.5(7) Any bottles of solution are labeled as to contents and used according to manufacturers' directions.

22.5(8) Single-use razors for removal of unwanted hair are disposed of after use on one patron. Electric razors used to remove unwanted hair of a patron are cleaned with a brush and fungicidal/tuberculocidal disinfectant spray.

22.5(9) Topical ointments are prepared for single-patron use.

641—22.6(10A) Procedures. Tattoo establishments shall comply with the following:

22.6(1) Tattoo establishments will establish a written standard operating procedure (SOP) that includes the process for setup and tear down of tattoo procedures. The SOP focuses on procedures of hygiene and cross-contamination control.

22.6(2) For privacy purposes and at the patron's request, establishments have in place or readily available a nontransparent panel or other barrier of sufficient height and width to effectively separate the patron from any unwanted observers or waiting patrons.

22.6(3) Tattoo artists scrub their hands thoroughly before beginning the tattoo procedure. Tattoo artists dry their hands with individual single-use towels or hand dryer.

22.6(4) Tattoo artists wear clean garments and disposable latex, nitrile, chloroprene, or vinyl gloves during the tattoo procedure. Gloves are changed after each tattoo. Tattoo artists wash their hands before and after each tattoo procedure.

22.6(5) All items with which the gloved hands of the tattoo artist would normally come into contact during the tattooing procedure have appropriate barrier films covering them, including clip cords, squeeze bottles, seat adjustment controls, power control dials or buttons, and work lamps.

22.6(6) The skin area to be tattooed is first cleansed with soap and water. Single-use towels or sponges (gauze) are used during the cleansing procedure.

22.6(7) Before placing the tattoo design on the patron's skin, the tattoo artist prepares the skin with 70 percent ethyl or isopropyl alcohol solution or an equally effective antiseptic or antimicrobial.

22.6(8) Tattooing is not performed on any area where there is evidence of skin infection, irritation, or abnormalities.

22.6(9) After the tattooing is completed, the tattoo artist:

a. Applies an adequate dressing or bandage to the tattoo area.
b. Provides to the persons tattooed printed aftercare instructions regarding tattoo care during the healing process.

c. Thoroughly cleans the machine head with an acceptable disinfectant and sprays an acceptable surface disinfectant over the work area during the clean-up procedures before the area is set up for the next tattoo procedure.

641—22.7(10A) Permit issuance and renewal. The following apply to applications for a permit to practice as a tattoo artist or as a tattoo establishment.

22.7(1) An applicant will complete either an online application or a paper application according to the instructions contained in the application. Paper applications are available to download at the department's website. Each application must be accompanied by the appropriate fee as set forth in subrule 22.8(2) to be processed. A paper application is accompanied by the appropriate fee payable by check or money order to the department. Online application fees are paid by credit card only. An application that includes insufficient or incorrect fees is considered incomplete. If the applicant is notified that the application is incomplete, the applicant should contact the department within 90 days. Incomplete applications are considered invalid and destroyed after 90 days.

22.7(2) Documentation of medical conditions and criminal convictions related to the practice of the profession shall include a full explanation from the applicant. No application is considered complete until the applicant responds to any program requests for additional information regarding the applicant's medical condition or criminal conviction.

22.7(3) All permits expire on December 31 for the year issued. An applicant will submit a completed application, supporting documentation, and renewal fee annually by December 1 for renewal. The permit holder has a current permit in possession before performing tattooing. An applicant who submits a renewal application after December 1 will be obligated to pay an additional \$25 for each month delinquent.

22.7(4) The permit holder is responsible for renewing the permit prior to its expiration.

22.7(5) A permit that has not been renewed within 90 days of the permit expiration date will automatically be deactivated. There will be a \$25 reinstatement fee charged for reactivating a permit in addition to the renewal fee.

641—22.8(10A) Fees.

22.8(1) All fees are nonrefundable.

22.8(2) Fees for all initial and renewal applications are as follows:

- a.* Tattoo artist: \$75.
- b.* Tattoo establishment: \$100.
- c.* Temporary tattoo establishment:
 - (1) Zero to ten participating artists: \$100.
 - (2) Eleven to 100 participating artists: \$200.
 - (3) One hundred one or more participating artists: \$300.
- d.* Mobile tattoo unit: \$100.
- e.* Mobile tattoo event: \$25 per event.

- f.* Tattoo establishment change of ownership: \$25.
- g.* Tattoo establishment change of location: \$25.
- h.* Mobile tattoo unit change of location: \$25.

641—22.9(10A) Tattoo establishment permit criteria.

22.9(1) No tattoo establishment may operate in the state without having a permit to operate issued by the department. Permits shall be posted in a conspicuous location in the tattoo establishment.

22.9(2) A person applying for a tattoo establishment permit will submit a floor plan of the establishment with the application.

22.9(3) A permit to operate is issued to a new establishment when the department or its representative has successfully completed an on-site inspection.

22.9(4) Tattoo establishment permits are nontransferable.

22.9(5) A tattoo establishment shall retain a record of all persons who have had tattoo procedures performed at the establishment. Records include the client's name and date of birth, copy of client's identification, date of the procedure, name of the tattoo artist who performed the procedure(s), and signature of client. Records shall be retained in a confidential manner for a minimum of three years and made available to the department or inspection agency upon request.

22.9(6) Change in ownership. Within 30 days of a change in ownership of a tattoo establishment, the new owner shall submit a change in ownership application and fee for a new permit. An on-site inspection will be completed before a permit to operate will be issued.

22.9(7) Within 30 days of a change of location of a tattoo establishment, the owner shall submit a change of location application and a fee for a new permit. An on-site inspection will be completed by the inspection agency before a permit to operate will be issued.

641—22.10(10A) Tattoo artist permit criteria.

22.10(1) No person may perform tattooing without a current permit to operate issued by the department.

22.10(2) Each permit issued is in effect solely for the tattoo artist named thereon and remains with the tattoo artist upon any change of employment. Tattoo artist permits are nontransferable.

22.10(3) An applicant for a tattoo artist permit must be at least 18 years of age and submit government-issued documentation to show proof of attaining the age of 18 years.

22.10(4) A tattoo artist must provide proof of current certification by the American Red Cross for blood-borne pathogens and standard first aid or other equivalent, nationally recognized certification.

22.10(5) Permits shall be posted in a conspicuous place in the tattoo establishment.

641—22.11(10A) Temporary establishment permit criteria.

22.11(1) A person must submit a temporary tattoo establishment application form, a floor plan of the facility, promotional documentation for the event, and the appropriate fee at least 30 days prior to the event to obtain a temporary establishment permit. Fees are based on the number of participating tattoo artists. The application specifies the following:

- a.* The purpose for which the permit is requested.
- b.* The period of time during which the permit is needed (not to exceed 14 calendar days per event).
- c.* The fulfillment of tattoo artist criteria as specified in rule 641—22.10(135). A list of participating tattoo artists shall be sent to the tattoo program no later than one week prior to the event.
- d.* The location at which the temporary event will be held.

22.11(2) The temporary event must be inside a permanent building and comply with the following:

- a.* Conveniently located hand-washing facilities with liquid soap, single-use towels or hand dryers and potable hot and cold water under pressure to a mixing-type faucet are provided. Drainage in accordance with local plumbing codes are provided.
- b.* A minimum of 80 square feet of floor space is provided for each booth.
- c.* There is sufficient lighting where the tattoo procedure is being performed.

d. All tubes, tips and grips used for the tattoo procedure that are not single use are properly sterilized and dated 30 days or less prior to the date of the event. Evidence of a spore test performed on the sterilization equipment is dated 30 days or less prior to the date of the event. Single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers is allowed.

e. Tattoo artists properly clean and sanitize the area used for tattoo procedures.

f. Floors of the tattooing area(s) are smooth and impervious or covered with an impermeable barrier.

22.11(3) The facility where the temporary event will be held must be inspected by the designated inspection agency and issued a permit prior to the performance of any tattoo procedures. A \$50 inspection fee for each booth shall be made payable to the inspection agency.

22.11(4) No animals, except service animals, are allowed in the temporary establishment at any time.

22.11(5) Temporary establishment permits issued under the provisions of these rules may be suspended by the department for failure of the holder to comply with these rules.

22.11(6) Temporary establishment permits and tattoo artist permits shall be posted in a conspicuous place in the temporary establishment.

641—22.12(10A) Mobile tattoo unit permit criteria. No new mobile tattoo units will be permitted. Mobile tattoo units granted a permit prior to September 7, 2016, may continue to operate with a current permit provided they remain compliant with the rules of this chapter. Mobile tattoo units and tattoo artists working from mobile tattoo units shall comply with the following:

22.12(1) No mobile tattoo unit is operated in the state without having a permit to operate issued by the department.

22.12(2) All tattoo artists working in a mobile tattoo unit have a permit and comply with these rules. Artist permits are posted in a conspicuous location in the mobile tattoo unit.

22.12(3) Mobile tattoo unit permits are posted in a conspicuous place in the mobile tattoo unit.

22.12(4) Mobile tattoo unit permits are nontransferable.

22.12(5) Within 30 days of a change of address of where the mobile tattoo unit is housed, the owner submits a new application and a fee for a new permit.

22.12(6) Inspections will be conducted by the local jurisdiction in which the mobile tattoo unit is housed. Any out-of-state mobile tattoo units maintaining an Iowa mobile tattoo unit permit must be inspected annually.

22.12(7) Mobile tattoo units are permitted for use only at temporary events lasting 14 calendar days or less. Permits are obtained at least 14 days prior to the event, and no tattoo procedures are performed before a permit is issued. Promotional documentation of the event is included with the application. Permit holders are responsible for compliance with all other local regulations including but not limited to zoning and business license criteria.

22.12(8) The mobile tattoo unit is maintained in a clean and sanitary condition at all times. Doors are tight-fitting. Openable windows have tight-fitting screens.

22.12(9) Mobile tattoo units meet the sterilization criteria in accordance with rule 641—22.5(135).

22.12(10) Mobile tattoo units are used only for the purpose of performing tattoo procedures. No habitation or food preparation is permitted inside the vehicle unless the tattoo work station is separated from such areas by an impervious floor-to-ceiling barrier.

22.12(11) Mobile tattoo units are equipped with a hand sink for use of the tattoo artist for hand washing and preparing the client for the tattoo procedures. The hand sink is supplied with hot and cold running water under pressure to a mixing-type faucet, as well as liquid soap and single-use towels in dispensers or hand dryer. An adequate supply of potable water is maintained for the mobile tattoo unit at all times during operation. The source of the water and storage of the tank(s) is also identified.

22.12(12) All liquid wastes are stored in an adequate storage tank with a capacity at least 15 percent greater than the capacity of the on-board potable water supply. Liquid wastes are disposed of at a publicly owned treatment works site approved by the department of natural resources (DNR).

22.12(13) Restroom facilities are available at the temporary event or within the mobile tattoo unit. A hand sink is available within a reasonably acceptable distance from the restroom. The hand sink is

supplied with hot and cold running water under pressure to a mixing-type faucet, as well as liquid soap and single-use towels or hand dryer.

22.12(14) All tattoo artists working in a mobile tattoo unit have a permit and comply with these rules. Permits are posted in a conspicuous location in the mobile tattoo unit.

22.12(15) No animals, except service animals, are allowed in the mobile tattoo unit at any time.

641—22.13(10A) Inspections.

22.13(1) An inspection fee of \$250 is due upon receipt of a notice of payment due, which will be billed by the inspection agency upon completion of an inspection.

22.13(2) Tattoo establishments are inspected annually and the reports of inspections maintained by the inspection agency for three years.

22.13(3) When the tattoo establishment is located within the jurisdiction of a local inspection agency, the local inspection agency may establish fees needed to defray the costs of inspection and enforcement under this chapter. Inspection fees billed by a local inspection agency are paid to the local inspection agency or its designee.

22.13(4) When an inspection agency determines that a special inspection is necessary, such as a follow-up inspection or an inspection generated by complaints, the inspection agency may charge a special inspection fee based on the actual cost of providing the inspection.

22.13(5) Unpaid inspection fees are delinquent 30 days after the date of the bill. A late fee of \$30 per month will be assessed to the establishment owner after a 30-day notice. If inspection fees remain unpaid after 60 days, an order to cease and desist operations will be issued by the department.

22.13(6) Failure to allow an inspection is grounds for denial or suspension of a tattoo establishment's permit.

22.13(7) If an imminent health threat exists, the inspection agency or the department may order the establishment to cease operation immediately pursuant to Iowa Code section 17A.18A. Operation shall not be resumed until authorized by the inspection agency or the department.

22.13(8) Safety data sheets (SDS) for the chemicals used at the tattoo establishment shall be maintained at the establishment and made available upon request.

22.13(9) The most recent routine inspection report, along with any reinspection reports, shall be posted in a location at the establishment that is readily visible to the public.

641—22.14(10A) Tattoo inspector qualifications. Tattoo inspectors shall have successfully completed a blood-borne pathogen certification course from the American Red Cross or an equivalent nationally recognized organization, documentation of which is maintained by the local inspection agency.

641—22.15(10A) Enforcement. The inspection agency may take the following steps when enforcement of these rules is necessary.

22.15(1) Owner notification. The inspection agency will provide written notification to the owner of the establishment that:

- a. Cites each section of the Iowa Code or rule of the Iowa Administrative Code violated.
- b. Specifies the manner in which the owner or operator failed to comply.
- c. Specifies the steps needed for correcting the violation.
- d. Requests a corrective action plan, including a time schedule for completion of the plan.
- e. Sets a reasonable time limit, not to exceed 30 days from the receipt of the notice, within which the owner of the establishment must respond.

22.15(2) Corrective action plan review. The inspection agency will review the corrective action plan and approve it or direct modifications.

22.15(3) Failure to comply. If the owner of a tattoo establishment, mobile tattoo unit, or temporary establishment fails to comply with conditions of the written notice, the inspection agency may take enforcement action in accordance with Iowa Code chapter 135 or local ordinances.

641—22.16(10A) Adverse actions and appeals.

22.16(1) Failure to abide by Iowa Code section 135.37 or this chapter may result in adverse action, including the denial or revocation of a permit, or an order to cease operations until necessary corrective action has been taken. If the establishment continues to be operated in violation of the order of the department, the department may refer the matter to the county attorney or attorney general for injunction, criminal penalties, or other appropriate action.

22.16(2) The following are particular instances that may result in adverse action as set forth in subrule 22.16(1):

- a.* Any material misstatement in the application, renewal, or any supplementary statement.
- b.* Failure to pay fees in accordance with this chapter.
- c.* Operation without a current permit.
- d.* Falsification of records, qualifications, or other information related to permitting approval.
- e.* Failure to correct any violation identified during an inspection that jeopardizes public safety.
- f.* Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts that may constitute unethical conduct include:
 - (1) Verbally or physically abusing a patron.
 - (2) Improper sexual contact with, sexual harassment of, or improper sexual advances upon a patron. Sexual harassment includes sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
 - (3) Betrayal of a professional confidence.
 - (4) Engaging in a professional conflict of interest.
- g.* Failing to cooperate with an investigation or engaging in conduct attempting to subvert an investigation.
- h.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- i.* Knowingly aiding, assisting or advising a person to unlawfully practice tattooing.
- j.* Representing oneself as a tattoo artist when one's permit has been denied, suspended, revoked, lapsed, or placed on inactive status.
- k.* Mental or physical inability reasonably related to and adversely affecting the tattoo artist's ability to practice in a safe and competent manner.
- l.* Habitual intoxication or addiction to drugs, including habitual or excessive use of drugs or alcohol that impair a tattoo artist's ability to practice with reasonable skill or safety.
- m.* Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.
- n.* Violating a statute of this state or another jurisdiction relating to the provision of tattooing, including but not limited to crimes involving dishonesty, fraud, theft, embezzlement, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- o.* Having a certification or permit to practice tattooing suspended or revoked, or other disciplinary action taken by a licensing, certifying, or permitting authority in any jurisdiction. A copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.
- p.* Failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.
- q.* Failure to appropriately respond to written communication from the department sent by registered or certified mail.

22.16(3) Notice of issuance of a denial, revocation, or order to cease operations will be served by certified mail, return receipt requested, or by personal service.

22.16(4) An aggrieved party may request a contested case appeal in writing to the department within 20 days from the date of the aggrieved party's receipt of the department's order. 481—Chapters 9 and 10 are applicable to contested case appeals.

These rules are intended to implement Iowa Code section 10A.531 as transferred by 2023 Iowa Acts, Senate File 514, section 1711.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 23
“Plumbing and Mechanical Systems Board—Licensee Practice”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4(2), 105.5, 105.10, and 105.21
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 105

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposing promulgation of new 641—Chapter 23, “Plumbing and Mechanical Systems Board—Licensee Practice,” implements Iowa Code chapter 105 in accordance with the goals of Executive Order 10 (January 10, 2023). The rulemaking defines the various license types and establishes expectations and duties for licensure and supervision. It also establishes that inactive licenses and lapsed licenses are not valid for practice. This is important to the industry and the public because it creates an understanding of what is expected of licensed individuals and businesses. The public can be assured that licensed businesses have the appropriate bonding and insurance and that their employees are appropriately supervised. The industry can be assured that all licensed individuals and businesses are following the same standards throughout Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no known costs to the general public. There are costs to the industry related to licensees obtaining and maintaining their licenses. There are costs to the agency for staff to administer the program. This includes processing staff, an investigator, and a supervisor/board executive. There are also costs associated with the database that houses all of the data related to licensure.

- Classes of persons that will benefit from the proposed rulemaking:

The general public will benefit from this proposed rulemaking because it ensures businesses in the industry are appropriately bonded, insured, and supervised. The industry will benefit from this rulemaking because all licensed individuals and businesses are following the same standards throughout Iowa.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The costs for the individual licensees are those incurred in the course of obtaining and maintaining their licenses. The costs for contractor licensees are those incurred in the course of obtaining and maintaining proper bonding and insurance. The costs to licensees include the license fees, which are described in 641—Chapter 28. There are also costs associated with continuing education courses or apprenticeship programs. Those costs vary depending on the type and number of licenses an individual must maintain. Estimated continuing education units (CEU) costs are described in the Regulatory Analysis for 641—Chapter 30 (IAB 11/1/23).

- Qualitative description of impact:

These rules are necessary to implement the overall program goals identified in Iowa Code chapter 105. The public is protected by having an appropriately qualified and trained workforce in the industry. There are multiple examples of unqualified and unlicensed individuals who have created hazardous situations due to improper installation or repair of plumbing and mechanical systems. If licensed companies have issues, there are licensing and bond requirements that are also intended to protect the public.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The fees collected are retained and go to the agency in order to implement the program.

Costs to the agency for implementing Iowa Code chapter 105 include the support staff for processing licenses and CEUs, an investigator, and supervisor. It also includes IT/AMANDA support staff and other office costs, the database used to store licensee information and issue licenses, and indirect costs. This specifically includes 3.6 full-time equivalent (FTE) positions at a cost of approximately \$322,254 in FY 2023. It includes a Computer Aid, Inc., vendor at \$50,000 in FY 2023. It includes expenses associated with licensing software and technology at a cost of approximately \$625,000 in FY 2023. Indirect costs in FY 2023 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as a division administrator, legal support, and fiscal support.

- Anticipated effect on state revenues:

The fees collected are retained and go to the agency in order to implement the program. Iowa Code section 105.9(5)“a” requires the Plumbing and Mechanical Systems Board (Board) to submit a report to the General Assembly within 60 days following the end of each fiscal year that includes a balance sheet projection extending no less than three years. If the revenue projection exceeds expense projections by more than 10 percent, the Board is required to adjust its fee schedules accordingly so that projected revenues are no more than 10 percent higher than projected expenses. Accordingly, the Board does not anticipate any effect on state revenues in excess of 10 percent. The estimated new revenue for FY 2023 was \$2,000,000. Any civil penalties that are collected due to noncompliance are directed to the General Fund, thereby increasing state revenues. In FY 2022, there was \$8,300 in civil penalty fines collected. In FY 2023, there was \$2,750 in civil penalty fines collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed rules add very little cost beyond any costs incurred due to the substantive requirements of Iowa Code chapter 105. Furthermore, the cost of licensing is relatively minimal when compared to the benefit of having a properly trained and supervised workforce in this industry. When using properly licensed businesses and individuals, the public can have confidence that this important work is done safely and correctly. There are bonding and insurance requirements in cases where work is not done properly, the costs of which are statutorily required to be borne by the licensees. The bonding and insurance requirements protect the public from economic harm resulting from incomplete work and incentivizes licensees to complete work using ethical business practices.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

No known alternative exists.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Prior to statewide licensing in 2010, local jurisdictions had their own licensing requirements or none at all. There was no uniformity, and businesses and individuals often had to have multiple licenses for multiple jurisdictions. There is now uniformity for licensing, and the entire industry is following the same rules due to the requirements of Iowa Code chapter 105 and rules discussed herein that clarify and implement Iowa Code chapter 105. The rules discussed herein are already believed to be the least restrictive implementation of Iowa Code chapter 105.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Statewide licensing is required by Iowa Code chapter 105 and broadly protects all of the citizens of Iowa and treats the entire industry with uniformity. The Board is statutorily required to adopt rules to implement Iowa Code chapter 105, and the rules proposed herein are believed to be the least restrictive implementation of Iowa Code chapter 105.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The impact on small business is already believed to be at the lowest level available in order to implement and carry out the duties of the agency in Iowa Code chapter 105. One of the positions on the Board is specific to a contractor primarily working in rural Iowa, which is likely to be a small business. If a small business subject to this proposed chapter identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23 PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE PRACTICE

641—23.1(105) Definitions. The definitions set forth in Iowa Code section 105.1 are incorporated herein by reference. For purposes of these rules, the following additional definitions apply:

“*Inactive license*” means a license that is available for a plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic professional who is not actively engaged in running a business or working in

the business in the corresponding discipline at that license level. An inactive license must be renewed prior to its expiration date. An inactive license is not valid for practice until the license is reactivated by the board.

“Lapsed license” means a license that has expired. A lapsed license is no longer valid for practice.

“Licensee” means a person holding a license issued by the board, including an apprentice, journey person, or master license in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronics trades; a combined license; a special, restricted sublicense; or a medical gas certificate.

“Master of record” means an individual possessing an active master license under Iowa Code chapter 105 who shall be responsible for the proper designing, installing, and repairing of plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems and who is actively in charge of the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic work of a contractor.

641—23.2(105) Duties of all licensees, specialty licensees, and certificate holders.

23.2(1) While conducting business or performing work covered under Iowa Code chapter 105, each licensee will keep a copy of the licensee’s board-issued license on the licensee’s person or in an easily retrievable area at the work site.

23.2(2) Each licensee will maintain a residential or business address on record with the board. In the event the licensee’s residential or business address changes, the licensee will so notify the board.

23.2(3) Each licensee will apply for and obtain all applicable permits prior to performing any work covered under Iowa Code chapter 105 as may be mandated by any law, ordinance, or regulation of this state, or a political subdivision therein.

23.2(4) A licensee will present upon request a copy of the licensee’s board-issued license issued under Iowa Code section 105.12(2).

23.2(5) A licensee possessing a lapsed license cannot operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a medical gas system installer or work in a specialty license discipline until the license is reinstated and renewed.

23.2(6) Each licensee will perform all Iowa Code chapter 105-covered work in conformity with the applicable professional code.

23.2(7) A licensee will not perform any Iowa Code chapter 105-covered work for which the licensee does not possess the requisite license.

23.2(8) A licensee will conform to the minimum standard of acceptable and prevailing practice and will exercise the degree of workmanlike care which is ordinarily exercised by the average licensee in the applicable trade acting in the same or similar circumstances.

23.2(9) A licensee who utilizes the services of an unlicensed person as a helper will be responsible for the work performed by the helper and shall ensure that such work conforms to the minimum standard of acceptable and prevailing practice.

641—23.3(105) Contractor license. A contractor licensed under Iowa Code chapter 105 will adhere to the following, the violation of which may give rise to disciplinary action:

23.3(1) Master license. A contractor will not engage in the business of designing, installing, or repairing plumbing, mechanical, HVAC-refrigeration, or hydronic systems unless at all times the contractor holds or employs at least one person holding an active master license issued by the board for each discipline in which the contractor conducts business. Without prior board approval, a contractor will not knowingly utilize a master licensee to meet this requirement if the master licensee is simultaneously associated with another contractor in that discipline.

a. Notwithstanding subrule 23.3(1), in the event a licensed master of record’s employment with the contractor is terminated, or the master of record otherwise discontinues the master of record’s relationship with the contractor, or the master of record’s master license is lapsed, suspended, revoked, expired, or otherwise invalidated, the contractor may continue to provide plumbing, mechanical, HVAC-refrigeration, or hydronic systems services for a period of up to six months without identifying a new master of record.

b. To utilize the six-month grace period set forth in paragraph 23.3(1) “a,” a contractor will notify the board of the contractor’s loss of the master of record within 30 days from the date the master of record is no longer associated with the contractor, absent exigent circumstances.

23.3(2) *Display of license.* A person holding a contractor license will keep the current license certificate publicly displayed in the primary place in which the person practices.

23.3(3) *Surety bond.* A person or entity holding a contractor license must maintain during the licensing period a surety bond issued by an entity licensed to do business in Iowa in a minimum amount of \$5,000. If a person operates the contractor business as a sole proprietorship, the person must personally obtain and maintain the surety bond. If a person operates the contractor business as an employee or owner of a legal entity, the legal entity must obtain and maintain the surety bond, and the surety bond must cover all plumbing or mechanical work performed by the legal entity. The surety bond mandated under this subrule must contain a provision that requires the issuing entity to provide the board ten days’ written notice before the surety bond can be canceled.

23.3(4) *Public liability insurance.* A person or entity holding a contractor license must maintain during the licensing period public liability insurance issued by an entity licensed to do business in Iowa in a minimum amount of \$500,000. If a person operates the contractor business as a sole proprietorship, the person must personally obtain and maintain the public liability insurance. If a person operates the contractor business as an employee or owner of a legal entity, the legal entity must obtain and maintain the public liability insurance, and the public liability insurance must cover all plumbing and mechanical work performed by the legal entity. The public liability insurance mandated under this subrule must contain a provision that requires the issuing entity to provide the board ten days’ written notice before the public liability insurance can be canceled.

23.3(5) *Contractor registration with the department.* A contractor will maintain registration as a contractor with the director pursuant to Iowa Code chapter 91C by providing the board with the necessary information.

23.3(6) *Permanent place of business.* A contractor will maintain a permanent place of business, the address of which will be provided to the board. If a contractor changes the permanent place of business, the contractor will provide the board the new address within 30 days of the change.

23.3(7) *Licensure.* A contractor will not knowingly allow an employee to perform work covered under Iowa Code chapter 105 without the applicable license.

23.3(8) *Supervision.* A contractor will not knowingly allow an apprentice employed by the contractor to perform work covered under Iowa Code chapter 105 without supervision of the apprentice by a master or journeyman who is also employed by the contractor and who is licensed in the discipline in which the apprentice is performing such work.

641—23.4(105) Master license. A master licensed under Iowa Code chapter 105 will adhere to the following, the violation of which may give rise to disciplinary action:

23.4(1) *Contractor relationship.* A master may only be a master of record for one contractor in any particular discipline at any one time, except that a contractor or a master may seek prior board approval to serve as the master of record for more than one contractor in a particular discipline. An individual who possesses master licenses in multiple disciplines may be a master of record for multiple contractors so long as the individual is only a master of record for one contractor in any particular discipline at one time.

23.4(2) *Contractor.* A master will not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

23.4(3) *Supervision.* A master who superintends the design, installation, or repair of plumbing, mechanical, HVAC-refrigeration, or hydronic systems will be available to supervise journeymen or apprentices as needed and may only provide such supervision in the discipline or disciplines in which the master is licensed. A master will not knowingly supervise unlicensed persons who perform work covered under Iowa Code chapter 105 for which a board-issued license is required.

23.4(4) *Master of record.* A master who serves as a master of record for a contractor and who disassociates from the contractor will notify the board and the contractor of the disassociation, if

notice was not previously provided, within 30 days from the date of disassociation, absent exigent circumstances.

641—23.5(105) Journeyperson license. A journeyperson licensed under Iowa Code chapter 105 will adhere to the following, the violation of which may give rise to disciplinary action:

23.5(1) Working under supervision. A journeyperson will work under the supervision of a master licensed in the discipline of the work being performed in the design, installation, and repair of plumbing, mechanical, HVAC-refrigeration, or hydronic systems.

23.5(2) Contractor. A journeyperson will not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

23.5(3) Supervision. A journeyperson who superintends one or more apprentices may only provide such supervision in the discipline(s) in which the journeyperson is licensed and only while performing work for the same contractor licensed under Iowa Code chapter 105. A journeyperson shall not knowingly supervise unlicensed persons who perform work covered under Iowa Code chapter 105 for which a board-issued license is required.

641—23.6(105) Apprentice license. An apprentice licensed under Iowa Code chapter 105 will adhere to the following mandates, the violation of which may give rise to disciplinary action:

23.6(1) Working under supervision. An apprentice may only perform work covered under Iowa Code chapter 105 under the supervision of a master or journeyperson.

23.6(2) Contractor. An apprentice will not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

23.6(3) Dual licensure as an apprentice barred. A licensee cannot simultaneously possess both an active apprentice license and an active specialty license.

641—23.7(105) Specialty licenses and certifications.

23.7(1) Medical gas certification.

a. A person who possesses a medical gas certification and who performs medical gas brazing will maintain the person's brazing continuity.

b. A person who possesses a medical gas certification will maintain the person's valid certification issued from the National Inspection Testing Certification (NITC) Corporation or an equivalent authority approved by the board.

23.7(2) Hearth systems specialty license.

a. A person who possesses a hearth systems specialty license will maintain the person's valid certification issued from the National Fireplace Institute or equivalent authority approved by the board.

b. A hearth systems specialty license allows a licensee to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within three feet of the appliance. A hearth systems specialty license further allows for work in the venting systems associated with a hearth appliance, log lighters, gas log sets, fireplace inserts, and freestanding stoves. A hearth systems specialty license does not allow a licensee to install a shutoff valve or perform any other mechanical or HVAC-refrigeration work.

c. A person possessing a hearth systems specialty license will not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and will not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(3) Service technician HVAC specialty license.

a. A licensee who holds a service technician HVAC specialty license by demonstrating the licensee possesses a valid certification from North American Technical Excellence, Inc. or an equivalent authority approved by the board will maintain valid certification from North American Technical Excellence, Inc. or an equivalent authority approved by the board.

b. A service technician HVAC specialty license allows a licensee to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the

disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than three feet from the appliance. A service technician HVAC specialty license does not allow a licensee to perform any other mechanical or HVAC-refrigeration work.

c. A person possessing a service technician HVAC specialty license will not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and will not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(4) *Disconnect/reconnect plumbing technician specialty license.*

a. A disconnect/reconnect plumbing technician specialty license allows a licensee to perform work from the appliance shutoff valve or the fixture shutoff valve to the appliance or fixture and any part or component of the appliance or fixture, including the disconnection and reconnection of the existing appliance or fixture to the water or sewer piping and the installation of a shutoff valve no more than three feet from the appliance or fixture. A disconnect/reconnect plumbing technician specialty license does not allow a licensee to perform any other plumbing work.

b. A person possessing a disconnect/reconnect plumbing technician specialty license will not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and will not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(5) *Private school or college routine maintenance specialty license.*

a. A private school or college routine maintenance specialty license allows a licensee to perform routine maintenance within the scope of the licensee's employment with a private school or college. For purposes of this subrule, "routine maintenance" means the maintenance, repair, or replacement of existing fixtures or parts of plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems in which no changes in original design are made. Fixtures or parts do not include smoke and fire dampers or water, gas, or steam piping permanent repairs except for traps and strainers. Routine maintenance includes emergency repairs. Routine maintenance does not include the replacement of furnaces, boilers, cooling appliances, or water heaters more than 100 gallons in size.

b. A person possessing a private school or college routine maintenance specialty license will not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and will not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(6) *Dual licensure as an apprentice prohibited.* A licensee cannot simultaneously possess both an active apprentice license and an active specialty license.

641—23.8(105) Inactive license.

23.8(1) A person possessing an inactive license under 641—subrule 29.2(6) will not perform any plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic work for which licensure is mandated so long as the person's license is held in inactive status.

23.8(2) A person possessing an active journeyperson/inactive master license under 641—subrule 29.2(5) will not perform any plumbing, mechanical, HVAC-refrigeration, or hydronic work for which a master license is mandated so long as the person's master license is held in inactive status.

23.8(3) *Inactive specialty license.*

a. A person possessing an active specialty license under rule 641—23.7(105) will submit a written request to place the specialty license on inactive status in order to obtain an active apprentice license. The licensee will acknowledge that the licensee is unable to perform any work covered under Iowa Code chapter 105 outside of the apprenticeship program.

b. Notwithstanding 641—subrule 28.1(3), a person possessing both an inactive specialty license and an active apprentice license need not pay a renewal fee for the inactive specialty license so long as the person remains actively licensed as an apprentice.

c. Notwithstanding 641—subrule 30.2(2), a person possessing an inactive specialty license and an active apprentice license need not obtain any continuing education hours for renewal so long as the person remains actively licensed as an apprentice.

d. A person possessing both an inactive specialty license and an active apprentice license may surrender the apprentice license and reactivate the specialty license upon written request and payment of the fee for an active specialty license in the amount specified in 641—Chapter 28.

These rules are intended to implement Iowa Code sections 105.10, 105.14, 105.16, 105.18, 105.19, 105.20, and 105.22.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 24
“Private Well Testing, Reconstruction, and Plugging—Grants to Counties”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135.11

State or federal law(s) implemented by the rulemaking: Iowa Code sections 135.11 and 455E.11

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

Via video/conference call:
meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

This chapter sets forth HHS procedure in administering the Grants to Counties program for the purpose of testing private water wells, reconstructing private water wells, and the proper plugging of abandoned private water wells within the jurisdiction of each county board of health.

Grant program parameters are defined in Iowa Code section 455E.11. HHS administers these grants in coordination with the Iowa Department of Natural Resources.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
No direct costs to the public have been identified.
 - Classes of persons that will benefit from the proposed rulemaking:
County boards of health receiving grant funds will benefit.
Communities and individuals that live in a county that receives grant funds will also benefit. HHS incurs personnel costs for team members to administer the Grants to Counties program. These costs are reflected in the table below as “HHS Implementation.”
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

| | SFY2018 | SFY2019 | SFY2020 | SFY2021 | SFY2022 | 5-Year Total |
|-----------------------------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Costs | | | | | | |
| HHS Implementation | (\$81,000) | (\$84,000) | (\$87,000) | (\$90,000) | (\$93,000) | (\$435,000) |
| Grants to Counties | (\$2.6M) | (\$3M) | (\$3M) | (\$4M) | (\$4M) | (\$16.6M) |
| Benefits | | | | | | |
| Increased Public Trust | Intangible | Intangible | Intangible | Intangible | Intangible | Intangible |
| Improved Public Health and Safety | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | \$2,681,000 | \$3,084,000 | \$3,087,000 | \$4,090,000 | \$4,093,000 | \$17,035,000 |

*All monetary figures have been rounded to the nearest thousandth.

Sound grant administration ensures that grantees are using grant funds efficiently and appropriately, leading to public trust in government programming and improved public health and safety driven by the goals of the Grants to Counties program.

- Qualitative description of impact:

Sound grant administration ensures that grantees are using grant funds efficiently and appropriately, leading to public trust in government programming and improved public health and safety driven by the goals of the Grants to Counties program.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs personnel costs for team members to administer the Grants to Counties program. These costs are reflected in the table above as “HHS Implementation.”

- Anticipated effect on state revenues:

No impact on state revenues has been identified.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost-benefit analysis above shows increased public trust and improved public health and safety. Eliminating grant administration measures as defined in this chapter would weaken oversight of grant dollars, which could result in a diminished quality of work completed by grantees under the Grants to Counties program. A grantee using funds fraudulently or in contradiction to the requirements of the Iowa Code may diminish public trust in the Grants to Counties program and the Department, and eliminate gains to public health and safety that might have been realized under the program.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less costly method has not been identified to achieve the purpose of this rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

HHS administers the Grants to Counties program in accordance to requirements of the Iowa Code. This chapter does not ascribe Department duties or implementation elements in addition to those directly defined in the Iowa Code.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 24 and adopt the following new chapter in lieu thereof:

CHAPTER 24

PRIVATE WELL TESTING, RECONSTRUCTION, AND PLUGGING—GRANTS TO COUNTIES

641—24.1(455E,135) Grant procedures.

24.1(1) The department has adopted policies to administer the awarding of grants for the grants to counties program. Grants will be awarded pursuant to Iowa Code section 455E.11.

24.1(2) The department will:

- a. Determine program objectives;
- b. Set eligible and ineligible grant costs for which the department will reimburse county programs;
- c. Define performance requirements for grant recipients that set minimum standards to be met by all county programs;
- d. Develop a grant application and a grant application submission procedure;
- e. Terminate a grant found to be obtained by fraud or misrepresentation regardless of whether grant moneys have already been given to the grantee;
- f. Allow for an applicant to appeal the denial of a properly submitted grant application. Appeals shall be governed by 441—Chapter 7.

This rule is intended to implement Iowa Code sections 455E.11 and 135.11(26).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 26
“Backflow Prevention Assembly Testers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135K.4.

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 135K, 2023 Iowa Acts, Senate File 514, and Executive Order 10 (January 10, 2023)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of 641—Chapter 26, “Backflow Prevention Assembly Testers.” This rulemaking implements Iowa Code chapter 135K and 2023 Iowa Acts, Senate File 514, in accordance with the goals and directives of Executive Order 10 (January 10, 2023).

Iowa Code section 135K.3 provides that a “person shall not test or repair backflow prevention assemblies without first having registered with an having been approved by the department.” The Department is required to adopt rules providing for the establishment of minimum qualifications for registered backflow prevention assembly testers; minimum standards for approved courses; establishment and collection of fees to defray the cost of administering Iowa Code chapter 135K; provision of a listing of registered backflow prevention assembly testers to local health officials; and the administration and enforcement of Iowa Code chapter 135k.

The proposed rules establish pertinent definitions related to backflow prevention assembly testing; standards related to training, including procedures and for the approval of tester training courses, continuing education requirements, and approval of third party certification agencies; general provisions related to initial and renewal registrations, including setting fees; standards of conduct for registered testers, including record retention and the verification of equipment accuracy; and penalties and standards for denial, probation, suspension, or revocation of registration, training course approval, or third-party certification approval.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Costs associated with this proposed chapter are generally incurred by those seeking approval of their training courses, registration as a backflow prevention assembly tester, or approval as a third-party certification agency. There are also costs to the agency for staff to administer the program.

- Classes of persons that will benefit from the proposed rulemaking:

The general public utilizing services of a backflow prevention assembly tester benefit from this proposed rulemaking since it ensures minimum qualifications for the industry through appropriate training, equipment, and continuing education. The industry benefits from this rulemaking because it provides clear and consistent standards throughout Iowa.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The costs for the registered testers are those incurred in the course of obtaining and maintaining their licenses, including a \$72 fee for a two-year registration. There are also costs associated with completing an approved training program and completing continuing education courses. Those costs vary depending on the training provider. The provider that is most commonly used in Iowa charges \$975 for the initial 32-hour course and \$150 for the 5-hour course.

- Qualitative description of impact:

The Legislature directed the Department to establish and collect all fees necessary to administer Iowa Code chapter 135K and establish minimum qualifications for backflow prevention assembly testers and courses. The standards proposed herein protect the public by ensuring uniform standards for an appropriately qualified and trained industry, utilization of properly calibrated equipment, and maintenance of pertinent records and professional standards of conduct. Proper backflow prevention devices are an important tool in protecting the health of the general public. There are many examples of improper or failing devices causing widespread illness and even death.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to implement or enforce the proposed chapter include the costs of personnel utilized to process applications and investigate complaints, or to contract for any such work. There is one contract employee and 1.0 vacant full-time equivalent (FTE) position to process the registrations and administer the program. There is also a cost for the database that houses all of the information needed for backflow registrations. Specifically, in FY 2023, there were \$30,000 in database costs and \$30,000 in contract employee costs.

Fees collected by the Department defray the costs of administering the program, in accordance with Iowa Code section 135K.4. Fees do not exceed the costs of administering the program.

- Anticipated effect on state revenues:

The Department registers approximately 1,500 backflow prevention assembly testers under current 641—Chapter 26, and has approved eight training courses and two third-party certification agencies. In FY 2023, the Department collected approximately \$60,000 in registration fees, renewal fees, and training fees.

Notably, the fees are not anticipated to exceed the costs of administering the program and are in line with neighboring states when adjusted for term. For example, Minnesota charges a backflow prevention tester fee of \$28 annually (new and renewal) or \$38 (late), with a \$30 returned check fee. Iowa's fee of \$72 for a two-year registration term amounts to \$36 annually, with a \$15 returned check fee.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa Code section 135K.3 prohibits a person from testing or repairing backflow prevention assemblies without first having registered with having been approved by the Department. Iowa Code section 135K.4 requires the Department to establish minimum qualifications for registered backflow

prevention assembly testers and minimum standards for approved courses. The Legislature has determined that inaction is not an option.

The qualifications and criteria that the Department has promulgated are reasonable and appropriate for the protection of public safety while being reasonable and affordable for those offering courses and those seeking registration. As set forth in detail above, the fees historically charged have not exceeded the costs of administering the program and are not anticipated to going forward. Furthermore, they are in line with neighboring states when adjusted for term. The benefits achieved from this proposed rulemaking appear to justify the costs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Department has not identified any less costly or less intrusive methods to achieve the purpose of this proposed rulemaking, beyond simplification contained within the proposed rules. Pertinent areas of simplification include tester training submissions and registration renewal. The fee table currently utilized in 641—Chapter 26 for registration is overly complicated due to a set renewal time period and proration associated therewith. Fee submissions and dates of registration expiration have been simplified without being substantively changed as far as the fee incurred or length of registration term.

With respect to background prevention assembly tester training, rather than requiring a person or organization offering tester training to submit new application materials every five years, which required significant re-review of materials by the Department and compilation by the person or organization, the Department proposes requiring submission of only those changes made to the tester training program. This streamlines the compilation and review of such materials, without sacrificing the Department's review and consideration of quality in the program.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
See answer to Question 5. No alternative methods were considered beyond ensuring only appropriate requirements were repromulgated.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

As set forth above, the rules proposed are believed to be the least costly or least intrusive method to achieve the purpose of this proposed rulemaking and implement the Department's statutory duties. If a backflow prevention assembly tester, trainer, or third-party certification agency subject to this chapter is a small business and has identified a rule that is overly burdensome and the goals of which could be

achieved in a manner that would reduce the impact on the small business, it could utilize the Department’s established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26
BACKFLOW PREVENTION ASSEMBLY TESTER REGISTRATION

641—26.1(135K) Definitions.

“*ABPA*” means the American Backflow Prevention Association.

“*Administrative authority*” means an individual, board, department, or agency employed by a city, county or other political subdivision of the state and authorized by local ordinance to administer and enforce the provisions of the plumbing code.

“*Approved continuing education course*” means a department-approved course designed to supplement or refresh the knowledge of a registered tester and to meet the requirements of subparagraph 26.5(2) “a”(2).

“*Approved training course*” means a department-approved course designed to train individuals to test and repair backflow prevention assemblies.

“*ASSE*” means the American Society of Sanitary Engineering.

“*AWWA*” means the American Water Works Association.

“*Backflow prevention assembly*,” for the purposes of this chapter, means a device or means to prevent backflow into a potable water system for which a method of testing the device in-line has been published by the Foundation of Cross-Connection Control and Hydraulic Research at the University of Southern California.

NOTE: The following assemblies are included under this definition. This is not intended to be an exclusive list. If new devices and test methods are introduced that meet the definition, they are included under the rules.

| Backflow Prevention Assembly | Product Standards |
|---|------------------------------|
| Double Check Valve Assembly | ASSE 1015-2011, AWWA C510-07 |
| Double Check Detector Assembly | ASSE 1048-2011 |
| Pressure Vacuum Breaker | ASSE 1020-2011 |
| Reduced Pressure Principle Backflow Preventer | ASSE 1013-2011, AWWA 511-07 |
| Reduced Pressure Detector Assembly | ASSE 1047-2011 |
| Spill Resistant Pressure Vacuum Breaker | ASSE 1056-2013 |

“*Certified*” means certified as a backflow prevention assembly tester under the requirements of ABPA or another third-party certification agency.

“*Department*” means the same as defined in Iowa Code section 135K.1(3).

“*Proctor*” means an individual designated by a third-party certification agency to conduct certification examinations of backflow prevention assembly testers.

“*Registered backflow prevention assembly tester*” or “*registered tester*” means the same as defined in Iowa Code section 135K.1(4).

“*Third-party certification agency*” means the ABPA, ASSE or another agency approved by the department to certify the knowledge and skills of backflow prevention assembly testers.

641—26.2(135K) Registration. No person shall test or repair a backflow prevention assembly unless the person is a registered backflow prevention assembly tester.

641—26.3(135K) Returned checks. Any person who submits a check to the department that is returned for insufficient funds will incur a \$15 fee.

641—26.4(135K) Backflow prevention assembly tester training.**26.4(1) Tester training.**

a. A person or organization that plans to conduct or sponsor a backflow prevention assembly tester training course in Iowa shall apply to the department for approval of the course at least 15 days before the first time the course is held, using an application form provided by the department and submitting a \$200 nonrefundable fee.

b. The department will review the application and respond to the applicant within ten business days after receipt.

c. The person or organization responsible for the course content shall submit to the department any changes in the information set forth in paragraph 26.4(1) “*a*” every five years, no later than 30 calendar days before the end of the fifth year.

d. The course sponsor shall notify the department at least 15 days before an approved training course begins. The notification will include:

(1) Sponsoring organization name and website, contact person, mailing address, email address, and telephone number.

(2) Course dates and times.

(3) Course location, including street address.

(4) A \$50 nonrefundable fee.

e. A training course shall:

(1) Be at least 32 instructional hours and cover the following minimum subjects:

1. Backflow definitions, causes and examples.

2. Description of backflow prevention assemblies, their proper application and installation, and their operational characteristics.

3. Description and operational characteristics of test equipment.

4. Techniques for testing backflow prevention assemblies.

5. Troubleshooting of backflow prevention assemblies.

6. Record keeping and the responsibilities of regulatory agencies and the registered tester.

(2) Conclude with a written examination of at least 100 questions and a practical examination of testing techniques on all types of testable backflow prevention assemblies. The time for testing is in addition to the instructional hours. A score of at least 70 percent on the written examination and demonstration of proficiency in testing and troubleshooting procedures constitutes successful completion of the course. Approved third-party certification agency testing may be substituted for the course test.

f. The lead course instructor shall have documentation of successfully completing an approved training course or be certified, and have at least three years of experience in cross connection control.

g. The testing laboratory for a training course shall be equipped with the following:

(1) Examples of each of the backflow prevention assemblies from at least three different manufacturers. If fewer than three manufacturers make a type of backflow prevention assembly, at least one example of that type of backflow prevention assembly.

(2) At least one double check valve assembly and one reduced pressure principle assembly larger than two inches.

(3) At least one test station per three students.

26.4(2) Continuing education training.

a. A person or organization that plans to conduct or sponsor a continuing education course for registered testers in Iowa shall apply to the department for approval of the course at least 15 days before the course is scheduled to begin, using an application form provided by the department and submitted with a \$50 nonrefundable fee.

b. The department will review the application and respond to the applicant within ten business days after receipt.

c. A continuing education course will address cross connection control theory and practice; backflow prevention devices and methods; backflow prevention assembly installation, testing, troubleshooting and repair; codes and rules affecting cross connection control; safety issues related

to installation and testing of backflow prevention assemblies; or related subjects approved by the department.

26.4(3) *Third-party certification agencies.*

a. Third-party certification agencies seeking approval in Iowa shall submit a written request to the department, on agency letterhead and signed by an authorized representative of the agency, that includes at least the following:

- (1) Agency name and website, contact person, mailing address, email address, and telephone number.
- (2) A description of the written examination, whether it is open- or closed-book, and information about the arrangements for administration of the examination.
- (3) A copy of the testing procedures that are the basis for the practical examination.
- (4) A description of the procedures for the practical examination and the criteria for evaluating performance.
- (5) Proctor qualifications and training.
- (6) Procedures and criteria for renewing the certification. The renewal of certification will be completed at least every five years and include knowledge and skills testing.
- (7) A history of the development and implementation of the program, as applicable.
- (8) A list of other jurisdictions where the certification is allowed and regulatory contacts in those jurisdictions.
- (9) A nonrefundable fee of \$200.

b. A third-party certification agency will not certify an individual who was trained by the agency. An individual proctor will not certify individuals who have taken a course at which the proctor was an instructor.

c. A third-party certification agency shall submit to the department any changes to the information set forth in paragraph 26.4(3) “*a*” every five years, no later than 30 days before the end of the fifth year.

641—26.5(135K) Registration.

26.5(1) *Initial registration.*

a. A person who has successfully completed an approved training course may register with the department within one year of course completion. A person who is certified may register with the department. The applicant must submit:

- (1) A completed application form provided by the department.
- (2) Documentation of successful completion of an approved training course or certification.
- (3) A nonrefundable fee of \$72.

b. A person who has completed a course of training in another state may be registered in Iowa. The person will submit:

- (1) A completed Iowa application form provided by the department.
- (2) Documentation that:
 1. The person has successfully completed a training course meeting the hour and subject requirements for an approved training course (if the person completed the training course more than 12 months before the date of the application, provide documentation that the person has attended an average of at least 2.5 hours of continuing education training per year since completing the course), or
 2. The person is certified, or
 3. The person is registered as a backflow prevention assembly tester in a jurisdiction that has similar or greater requirements for training and continuing education than Iowa.
- (3) A nonrefundable fee of \$72.

c. Registration expires two years after it is issued.

26.5(2) *Renewal registration.*

a. Registered testers may renew 60 days prior to registration expiration and include:

- (1) A completed registration renewal application form provided by the department.

(2) Documentation that the registered tester has completed at least five hours of approved continuing education courses during the registration period or documentation that the registered tester is certified.

(3) A nonrefundable fee of \$72.

(4) Registration renewal applications received after expiration will incur a \$10 penalty per month, to a maximum \$50 penalty.

b. If a registration has lapsed greater than 24 months, the person applying for renewal shall demonstrate that one of the following is true:

(1) The person has successfully completed an approved training course within the 12 months before applying for registration renewal, or

(2) The person is certified, or

(3) The person is registered as a backflow prevention assembly tester in a jurisdiction that has similar or greater requirements for training and continuing education than does the state of Iowa.

641—26.6(135K) Standards of conduct.

26.6(1) A registered tester shall comply with these rules and any ordinances, rules and policies of the administrative authority in jurisdictions where the registered tester tests or repairs a backflow prevention assembly.

26.6(2) A registered tester shall maintain a record for each backflow prevention assembly tested for at least five years after the date on which the assembly was tested. Registered testers will complete an administrative authority's test report form if required by ordinance. Records may be reviewed during normal business hours by an authorized representative of the department or administrative authority of the jurisdiction in which the assembly is located. The assembly record will include at least:

a. The name, address and telephone number of the assembly owner.

b. The location of the facility in which the assembly is located.

c. The location of the assembly within the facility.

d. The type, brand, model, size, and serial number of the assembly.

e. The date and time of the test.

f. Results of the test.

g. Any assembly repairs or maintenance.

26.6(3) To field test a backflow prevention assembly, a registered tester shall use a differential pressure gauge, the accuracy of which is verified no less than every 13 months with results traceable to the National Institute of Standards and Technology (NIST). Any differential pressure gauge with an error of more than plus or minus 0.2 psi cannot be used to test a backflow prevention assembly. Methods of testing that use other types of equipment, including dual pressure gauges, water columns, or single pressure gauges, are not acceptable. For every test report record retained in accordance with subrule 26.6(2), the prior most recent accuracy verification for the differential pressure gauge shall be retained and made available to an authorized representative of the department or administrative authority of the jurisdiction in which the assembly is located.

641—26.7(135K) Penalty. In addition to other sanctions provided herein, a person who violates a provision of this chapter is guilty of a simple misdemeanor pursuant to Iowa Code section 135K.5.

641—26.8(135K) Denial, probation, suspension or revocation.

26.8(1) *Denial, probation, suspension or revocation of registration.* The department may deny an application for registration or renewal, place a registration on probation, suspend or revoke a registration, or order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

a. Negligence or incompetence in the testing of a backflow prevention assembly, including failure to report improper application or installation of a backflow prevention assembly to the facility owner and the administrative authority.

- b.* Knowingly submitting a false report of a test of a backflow prevention assembly to the owner of the facility, the local administrative authority, or the department.
- c.* Fraud in obtaining registration or renewal including, but not limited to:
 - (1) Intentionally submitting false information on an application for registration or renewal;
 - (2) Submitting a false or forged certificate or other record of training or certification.
- d.* Falsification of the assembly records set forth in subrule 26.6(2).
- e.* Failure to comply with these rules or the ordinances of an administrative authority in whose jurisdiction the registered tester tests a backflow prevention assembly.
- f.* Failure to pay registration, renewal or late fees.
- g.* Habitual intoxication or addiction to drugs.
- h.* Violating a statute of this state or another jurisdiction relating to backflow prevention assembly testing, including but not limited to crimes involving dishonesty, fraud, theft, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- i.* Suspension, revocation, or other disciplinary action pertaining to backflow prevention assembly testing in another jurisdiction. A copy of the record or order of suspension, revocation or disciplinary action is conclusive evidence.
- j.* Knowingly making misleading, deceptive, untrue, or fraudulent representations regarding the testing of backflow prevention assemblies, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts that may constitute unethical conduct include:
 - (1) Verbally or physically abusing a client or coworker.
 - (2) Improper sexual contact with, sexual harassment of, or improper sexual advances upon a client or coworker. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- k.* Failing to cooperate with an investigation or engaging in conduct attempting to subvert an investigation.
- l.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- m.* Knowingly aiding, assisting or advising a person to unlawfully practice as a backflow prevention assembly tester.
- n.* Representing oneself as a registered backflow prevention assembly tester when one's registration has been suspended, revoked, lapsed, or placed on inactive status.
- o.* Acceptance of any fee by fraud or misrepresentation.
- p.* Failure to appropriately respond to written communication from the department sent by registered or certified mail.

26.8(2) Denial or revocation of training course approval. The department may deny or revoke the approval for a training course or a continuing education course when it finds:

- a.* The lead instructor for a training course is not qualified in accordance with paragraph 26.4(1) "f."
- b.* The training course did not comply with paragraph 26.4(1) "e."
- c.* That the training course testing laboratory did not comply with paragraph 26.4(1) "g."
- d.* The organization or person applying for approval of a training or continuing education course intentionally submitted false information to the department in support of such approval.
- e.* The organization or person conducting or sponsoring training has falsified training or continuing education records, including issuance of a certificate or other record of training to a person who did not successfully complete a training course or who did not attend continuing education training.
- f.* The organization or person responsible for a training or continuing education course has permitted physical or verbal abuse or sexual harassment of a student or instructor. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

g. The organization or person responsible for training courses and continuing education courses consistently fails to notify the department of such courses in a timely fashion as set forth in paragraphs 26.4(1) “d” and 26.4(2) “a,” or fails to pay its fees.

h. Failure to comply with these rules.

26.8(3) Denial or revocation of approval as a third-party certification agency. The department may deny or revoke the approval for a third-party certification agency when it finds:

a. The application for approval contains material misinformation regarding the conduct and standards of the certification program or its acceptance in other jurisdictions.

b. Failure to adhere to the standards and procedures stated in the application for approval in the process of certifying or renewing the certification of testers.

c. Violations of paragraph 26.4(3) “b” or other failure to comply with these rules.

26.8(4) Complaints. Complaints regarding a registered tester, an approved training course, or a third-party certification agency may be sent to the department. The complainant should provide as much pertinent and specific information as to a potential violation as they are able to.

26.8(5) Appeals. Notice of denial, probation, suspension or revocation of registration; denial, probation or revocation of course approval; or denial, probation or revocation of third-party certification agency approval will be sent to the affected individual or organization by certified mail, return receipt requested, or by personal service. The affected individual or organization may appeal the denial, probation, suspension or revocation by requesting a contested case hearing within 20 days of receipt of the department’s order. The notice of denial, probation, suspension or revocation is deemed to be suspended during the appeal. Prior to or at the contested case hearing, the department may rescind the notice upon satisfaction that the reason for the denial, probation, suspension or revocation has been or will be removed. 481—Chapters 9 and 10 are applicable to contested case appeals.

These rules are intended to implement Iowa Code chapter 135K.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 27
“Plumbing and Mechanical Systems Board—Administrative and Regulatory Authority”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 105, 17A, and 21

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposing promulgation of new 641—Chapter 27, “Plumbing and Mechanical Systems Board—Administrative and Regulatory Authority,” implements Iowa Code chapter 105 in accordance with the goals of Executive Order 10 (January 10, 2023). The rulemaking sets forth the purpose of the Plumbing and Mechanical Systems Board (Board), which is to administer and enforce Iowa Code chapters 105 and 17A. The rulemaking outlines the organizational structure of the Board, when the Board meets, and how it conducts its business. The rulemaking outlines how to communicate with the Board and when licensees must notify the Board of address changes. This is important to the industry and the public because it provides transparency as to who is on the Board and how and when the Board conducts business.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are costs to the industry related to licensees obtaining and maintaining their licenses. With respect to this proposed chapter in particular, any costs to licensees would be de minimis administrative costs associated with providing the Board notifications of changes of information. There are costs to the agency for staff to administer the program.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and the industry will benefit from this proposed rulemaking because it describes how the Board is organized, how and when the Board conducts business, and how to contact the Board.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

With respect to this proposed chapter in particular, any costs to licensees would be de minimis administrative costs associated with providing the Board notifications of changes of information and are not specifically quantifiable. The costs for the individual licensees related to the overall program goals identified in Iowa Code chapter 105 include those incurred in the course of obtaining and maintaining their licenses. The costs for contractor licensees are those incurred in the course of obtaining and maintaining proper bonding and insurance. The costs to licensees include the license fees, which are described in 641—Chapter 28. There are also costs associated with continuing education courses or apprenticeship programs. Those costs vary depending on the type and number of licenses an individual must maintain. Estimated continuing education unit (CEU) costs are described in the Regulatory Analysis for 641—Chapter 30 (IAB 11/1/23).

- Qualitative description of impact:

These rules are necessary to implement the overall program goals identified in Iowa Code chapter 105, including that the Board is apprised of current contact information for licensees and that licensees understand the operations of the Board such that licensees are able to appreciably participate in Board proceedings.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

This proposed chapter merely sets forth pertinent definitions and describes Board operations in implementing the licensing program mandated by Iowa Code chapter 105 and Iowa's open meetings law, Iowa Code chapter 21, and the Iowa Administrative Procedures Act, Iowa Code chapter 17A, generally. There are no costs associated with this particular chapter. Costs to the agency in implementing Iowa Code chapter 105, overall, include the support staff for processing licenses and CEUs, an investigator, and supervisor. The costs also include IT/AMANDA support staff and other office costs, the database used to store licensee information and issue licenses, and indirect costs. This specifically includes 3.6 full-time equivalent (FTE) positions at a cost of approximately \$322,254 in FY 2023. It includes a Computer Aid, Inc., vendor at \$50,000 in FY 2023. It includes expenses associated with licensing software and technology at a cost of approximately \$625,000 in FY 2023. Indirect costs in FY 2023 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as a division administrator, legal support, and fiscal support.

- Anticipated effect on state revenues:

This proposed chapter, in particular, is not anticipated to have an effect on state revenues. With respect to implementation of Iowa Code chapter 105, overall, fees collected are retained and go to the agency in order to implement the program. Iowa Code section 105.9(5)“a” requires the Board to submit a report to the General Assembly within 60 days following the end of each fiscal year that includes a balance sheet projection extending no less than three years. If the revenue projection exceeds expense projections by more than 10 percent, the Board is required to adjust its fee schedules accordingly so that projected revenues are no more than 10 percent higher than projected expenses. Accordingly, the Board does not anticipate any effect on state revenues in excess of 10 percent. The estimated new revenue for FY 2023 was \$2,000,000. Any civil penalties that are collected due to noncompliance are directed to the General Fund, thereby increasing state revenues. In FY 2022, there was \$8,300 in civil penalty fines collected. In FY 2023, there was \$2,750 in civil penalty fines collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed rules add very little cost beyond any costs incurred due to the substantive requirements of Iowa Code chapter 105. Furthermore, the cost of licensing is relatively small when compared to the benefit of having a properly trained and supervised workforce in this industry. When using properly licensed businesses and individuals, the public can have confidence that this important work is done safely and correctly. There are bonding and insurance requirements in cases where work is not done properly, the costs of which are statutorily required to be borne by the licensees. The bonding and

insurance requirements protect the public from economic harm resulting from incomplete work and incentivizes licensees to complete work using ethical business practices.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

No known alternative exists.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Prior to statewide licensing in 2010, local jurisdictions had their own licensing requirements or none at all. There was no uniformity, and businesses and individuals often had to have multiple licenses for multiple jurisdictions. There is now uniformity for licensing, and the entire industry is following the same rules due to the requirements of Iowa Code chapter 105 and the proposed rules discussed herein that clarify and implement Iowa Code chapter 105. The rules discussed herein are already believed to be the least restrictive implementation of Iowa Code chapter 105.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Statewide licensing is required by Iowa Code chapter 105 and broadly protects all of the citizens of Iowa and treats the entire industry with uniformity. The Board is statutorily required to adopt rules to implement Iowa Code chapter 105, and the rules proposed herein are believed to be the least restrictive implementation of Iowa Code chapter 105.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The impact on small business is already believed to be at the lowest level available in order to implement and carry out the duties of the agency in Iowa Code chapter 105. One of the positions on the Board is specific to a contractor primarily working in rural Iowa, which is likely to be a small business. If a small business subject to this proposed chapter identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27
PLUMBING AND MECHANICAL SYSTEMS BOARD—ADMINISTRATIVE AND
REGULATORY AUTHORITY

641—27.1(17A,105) Definitions. The definitions set forth in Iowa Code section 105.2 are incorporated herein by reference. For purposes of this chapter, the following definitions also apply:

“*Board office*” means the office of the administrative staff.

“*Disciplinary proceeding*” means any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

“*License*” means a license to operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

“*Licensee*” means a person or entity licensed to operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

641—27.2(17A,105) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A and 105 with regard to the licensing and regulation of plumbers, mechanical professionals, and contractors. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and regulations of the licensure board. Responsibilities include, but are not limited to:

27.2(1) Licensing of qualified applicants to operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board by examination, renewal, endorsement, and reciprocity.

27.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

27.2(3) Imposing discipline on licensees as provided by statute or rule.

641—27.3(17A,105) Organization of board and proceedings.

27.3(1) Membership of the board is as provided in Iowa Code section 105.3.

27.3(2) The board will elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

27.3(3) The board will hold at least four meetings annually.

27.3(4) A majority of the members of the board shall constitute a quorum.

27.3(5) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board’s proceedings will be conducted in accordance with Robert’s Rules of Order, Revised.

27.3(6) The department will furnish the board with the necessary facilities and employees to perform the duties mandated by this chapter but shall be reimbursed for all costs incurred from funds appropriated to the board and subsequent fees from licensing activities.

27.3(7) The board has the authority to:

a. Develop and implement a program of continuing education to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which are appointed by the board chairperson and do not constitute a quorum of the board. The board chairperson appoints committee chairpersons.

d. Hold a closed session pursuant to Iowa Code section 21.5.

e. Investigate alleged violations of statutes or rules that relate to operation as a contractor; work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines; work as a certified medical gas system installer; or work in the specialty license disciplines developed by the board upon receipt of a complaint or upon the board’s own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licensees that are limited by a board order.

h. Perform any other functions authorized by a provision of law.

641—27.4(17A,105) Official communications.

27.4(1) All official communications, including submissions and requests, should be addressed to the Plumbing and Mechanical Systems Board at its current address.

27.4(2) Notice of change of name or address. Each licensee and licensed entity shall notify the board in writing of a change of name or change of current mailing address within 30 days after the occurrence.

641—27.5(21) 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 board's website or directly from the board office.

27.5(1) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Any additional time allowances will be at the discretion of the chairperson or acting chairperson.

27.5(2) Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

27.5(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

27.5(4) 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 person presiding at the meeting may request the user to discontinue use of the camera or device.

These rules are intended to implement Iowa Code chapters 17A, 21, and 105.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 28
“Plumbing and Mechanical Systems Board—Licensure Fees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4(2) and 105.9
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 105

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposing repromulgation of 641—Chapter 28, “Plumbing and Mechanical Systems Board—Licensure Fees,” implements Iowa Code chapter 105 in accordance with the goals of Executive Order 10 (January 10, 2023). The rulemaking establishes the fee schedule for all of the various licenses and examinations and other miscellaneous fees related to licensing. The rulemaking outlines when the licensing fees are prorated and establishes when the fees can be waived. This rulemaking is required by Iowa Code section 105.9 and is important to the industry because it ensures that the costs of obtaining and maintaining licensure are transparent.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no known costs to the general public. There are costs to the industry related to licensees obtaining and maintaining their licenses. Costs to licensees include initial and renewal license fees, examination application fees, license verification fee, returned check fee, paper application fee, and disciplinary hearing fee.

There are costs to the agency for staff to administer the program. This includes processing staff, an investigator, and a supervisor/Plumbing and Mechanical Systems Board—Licensure Fees (Board) executive. There are also costs associated with the database that houses all of the data related to licensure.

- Classes of persons that will benefit from the proposed rulemaking:

The industry will benefit from this proposed rulemaking because it clearly describes the fee structure. The industry can plan and budget for these fees. These rules are necessary to implement the overall program goals identified in Iowa Code chapter 105. The public is protected by having an appropriately qualified and trained workforce in the industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Costs to licensees include initial and renewal license fees, examination application fees, license verification fee, returned check fee, paper application fee, and disciplinary hearing fee. These fees in Iowa are similar to other surrounding states and correlate to the costs of administering the program. As set forth in proposed rule 641—28.1(105), Iowa’s three-year initial license fee (prorated using a one-sixth deduction for each six-month period) ranges from \$50 to \$250, depending on the type of license. The following are examples of fees for licenses from neighboring states similar to those in Iowa:

| | |
|---------------|---|
| South Dakota: | Plumbing contractor license, \$275 per year Journey plumbing license, \$105 per year |
| Minnesota: | Plumbing contractor license, \$128 per 2 years Master plumbing license, \$73 per 2 years Journey plumbing license, \$43 per 2 years |
| Wisconsin: | Journey plumbing license, \$190 per 4 years Master plumbing license, \$520 per 4 years Apprentice license, \$30 per year |
| Illinois: | Plumbing contractor license, \$150 per year Individual plumbing license, \$100 per year Apprentice \$100 per year |

Notably, Nebraska and Missouri do not have statewide licenses for plumbing and mechanical professionals.

- Qualitative description of impact:

These proposed rules are necessary to implement the overall program goals identified in Iowa Code chapter 105, and specifically required by Iowa Code section 105.9. As set forth in detail below, the licensee fees correlate to costs of administering Iowa Code chapter 105.

The public is protected by having an appropriately qualified and trained workforce in the industry. There are multiple examples of unqualified and unlicensed individuals who have created hazardous situations due to improper installation or repair of plumbing and mechanical systems. If licensed companies have issues, there are licensing and bond requirements that are also intended to protect the public.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The fees collected are retained and go to the agency in order to implement the program. Costs to the agency in implementing Iowa Code chapter 105 include the support staff for processing licenses and continuing education units (CEUs), an investigator, and supervisor. The costs also include IT/AMANDA support staff and other office costs, the database used to store licensee information and issue licenses, and indirect costs. This specifically includes 3.6 full-time equivalent (FTE) positions at a cost of approximately \$322,254 in FY 2023. It includes a Computer Aid, Inc., vendor at a cost of \$50,000 in FY 2023. It includes expenses associated with licensing software and technology at a cost of approximately \$625,000 in FY 2023. Indirect costs in FY 2023 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as a division administrator, legal support, and fiscal support.

As described in proposed rule 641—28.2(105) and required by Iowa Code section 105.9(5)“a,” the Board submits a report to the General Assembly within 60 days following the end of each fiscal year that includes a balance sheet projection extending no less than three years. If the revenue projection exceeds expense projections by more than 10 percent, the Board is required to adjust its fee schedules accordingly, so that projected revenues are no more than 10 percent higher than projected expenses. Accordingly, program costs and fees are closely correlated.

- Anticipated effect on state revenues:

The fees collected are retained and go to the agency in order to implement the program. Iowa Code section 105.9(5)“a” requires the Board submit a report to the General Assembly within 60 days following the end of each fiscal year that includes a balance sheet projection extending no less than three years. If the revenue projection exceeds expense projections by more than 10 percent, the Board is required to adjust its fee schedules accordingly, so that projected revenues are no more than 10 percent higher than projected expenses. Accordingly, the Board does not anticipate any effect on state revenues in excess of 10 percent. The estimated new revenue for FY 2023 was \$2,000,000. Any civil penalties that are collected due to noncompliance are directed to the General Fund, thereby increasing state revenues. In FY 2022, there were \$8,300 in civil penalty fines collected. In FY 2023, there were \$2,750 in civil penalty fines collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board is required by Iowa Code section 105.9 to set fees for the implementation of Iowa Code chapter 105, and the propriety of those fees is analyzed on an annual basis in accordance with Iowa Code section 105.9(5)“a.” Inaction is not statutorily permitted and, as described elsewhere herein, the benefits of ensuring a qualified and properly bonded industry are supported by the fees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

No known alternative exists.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Licensing fees are analyzed on an annual basis in accordance with Iowa Code section 105.9(5)“a.” The rules proposed herewith are already believed to be the least restrictive implementation of Iowa Code chapter 105.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The impact on small business is already believed to be at the lowest level available in order to implement and carry out the duties of the agency in Iowa Code chapter 105. One of the positions on the Board is specific to a contractor primarily working in rural Iowa, which is likely to impact a small

business. Notably, the proposed rules expressly address situations in which fees may be waived, which may be particularly useful for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 28 and adopt the following **new** chapter in lieu thereof:

CHAPTER 28
PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSURE FEES

641—28.1(105) Fees. All fees are nonrefundable.

28.1(1) Fees for three-year initial licenses are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is \$180.
- c. A master license as defined in 641—subrule 29.2(3) is \$240.
- d. A medical gas pipe certificate as defined in rule 641—29.3(105) is \$75.
- e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is \$50.
- f. A contractor license as defined in 641—subrule 29.2(4) is \$250.
- g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), and 29.2(10) is \$50.
- h. Fees for all initial licenses issued for a period of less than three years will be prorated using a one-sixth deduction for each six-month period.

28.1(2) Fees for three-year reciprocal licenses or three-year licenses obtained by verification in accordance with 641—Chapter 35 are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is \$180.
- c. A master license as defined in 641—subrule 29.2(3) is \$240.
- d. Fees for all reciprocal licenses or three-year licenses obtained by verification in accordance with 641—Chapter 35 issued for a period of less than three years will be prorated using a one-sixth deduction for each six-month period.

28.1(3) Fees for renewal of licenses are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is \$180.
- c. A master license as defined in 641—subrule 29.2(3) is \$240.
- d. A medical gas pipe certificate as defined in rule 641—29.3(105) is \$75.
- e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is \$50. However, no fee is necessary for an inactive specialty license as defined in 641—subrule 23.8(3) so long as the person possessing the inactive specialty license remains actively licensed as an apprentice.
- f. A contractor license as defined in 641—subrule 29.2(4) is \$250.
- g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), and 29.2(10) is \$50. However, no fee is necessary for an inactive specialty license as defined in 641—subrule 23.8(3) so long as the person possessing the inactive specialty license remains actively licensed as an apprentice.

28.1(4) The examination application fee is \$35.

28.1(5) A late fee for failure to renew before expiration is determined as follows:

- a. A licensee who does not timely renew but renews a license on or before the following July 31 may reinstate and renew the license upon payment of the appropriate renewal fee and without payment of a late fee.
- b. A licensee who does not timely renew but renews a license between the following August 1 and August 31 may reinstate and renew the license without examination upon payment of a \$60 late fee and the appropriate renewal of license fee.
- c. A licensee who does not timely renew but renews a license after the following August 31 and on or before the following June 30 may reinstate and renew the license without examination upon payment of a \$100 late fee and the appropriate renewal of license fee.

28.1(6) Reserved.

28.1(7) The fee for written verification of licensee status is \$20.

28.1(8) The returned check fee is \$25.

28.1(9) The disciplinary hearing fee is a maximum of \$75.

28.1(10) The paper application fee is \$25 plus the appropriate license fee.

28.1(11) Combined license.

a. For purposes of this subrule, “combined license” means more than one active master, contractor, or journey person license in one or multiple disciplines held by the same individual.

b. A license fee for a combined license is the sum total of each of the separate license fees as set forth in subrules 28.1(1) through 28.1(3) reduced by 30 percent.

c. Only individual licenses purchased in a single transaction are eligible for the combined licensee fee reduction.

28.1(12) The fee for combining an HVAC-refrigeration or hydronics license to a mechanical license is \$50. This fee does not apply at the time of reissue.

28.1(13) The fee for submitting a petition for eligibility determination as defined in 641—subrule 29.13(2) is \$25.

641—28.2(105) Annual review of fee schedule. Within 60 days following the end of each fiscal year, the board will submit a report to the general assembly in accordance with Iowa Code section 105.9(5) “*a.*”

641—28.3(105) Waiver of fees. Fee waivers are available under the following circumstances:

a. The board will waive any fee charged to an applicant for a license if the applicant’s household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

b. For an applicant who has been honorably or generally discharged from federal active duty or national guard duty, the board will waive an initial application fee and one renewal fee if those fees would otherwise be charged within five years of the discharge.

These rules are intended to implement Iowa Code sections 105.9 and 272C.15.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 29
“Plumbing and Mechanical Systems Board—Application, Licensure, and Examination”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4 and 272C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 105 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 29 and implements Iowa Code chapters 105 and 272C in accordance with the goals of Executive Order 10 (Jan. 10, 2023). This rulemaking implements the requirements set forth in Iowa Code chapter 105 related to application for license, licensure, and examination requirements. The intended benefit of this chapter is to establish license types that are available, the general requirements and minimum qualifications for the licenses, and establish a procedure to obtain a license. The rules set forth the minimum qualifications needed to pass examination prior to licensing. The rules create steps on when and how to renew, reinstate or reactivate a license, detail when a license may be denied, and set forth the process for determining eligibility prior to the license application.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees and the agency have costs associated with this rulemaking. Licensees incur fees for licensure and examination. The licensing fees are addressed in detail in 641—Chapter 28.
There are costs to the agency for staff to administer the program. This includes processing staff, an investigator, and a supervisor/board executive. There are also costs associated with the database that houses all of the data related to licensure. All of these are included in the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.
 - Classes of persons that will benefit from the proposed rulemaking:

Licensees benefit from this rulemaking because it provides uniformity to the licensing process. Prior to statewide licensing in 2010, local jurisdictions had their own licensing requirements or none at all. There was no uniformity, and businesses and individuals often had to have multiple licenses for multiple jurisdictions.

The general public benefits from the assurance that professionals regulated by this chapter meet minimum qualification standards and maintain up-to-date practice standards, and are therefore able to provide high-quality services to Iowans. Local educational institutions providing the examination to plumbing and mechanical systems professionals also benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Licensees incur fees for licensure and examination. The licensing fees are addressed in detail in 641—Chapter 28. With respect to examination fees, the Plumbing and Mechanical Systems Board has a memorandum of understanding with Kirkwood Community College to administer the examinations required to obtain a license. The cost for an examination is \$119 per examination. The cost to maintain the credentials through the National Inspections Testing Certification (NITC) for the medical gas piping is \$150 every 3 years. The number of licensees in the various licensing categories is set forth below:

Contractor: 1,890

Master (5,819 total)

- Plumbing: 2,939
- Hydronic: 310
- Mechanical: 1,364
- HVAC/R: 1,206

Journey (6,517 total)

- Plumbing: 2,700
- Hydronic: 672
- Mechanical: 1,486
- HVAC/R: 1,463
- Sheet Metal: 196

Apprentice: 1,921

Specialty (289 total)

- Hearth Systems: 8
- Private College: 6
- Disconnect/Reconnect Plumbing: 6
- Service Technician HVAC: 202
- Medical Gas: 67

- Qualitative description of impact:

This rulemaking provides uniform guidelines for licensing requirements for plumbing and mechanical systems professionals statewide. Prior to statewide licensing in 2010, local jurisdictions had their own licensing requirements. There was no uniformity, and businesses and individuals often had to have multiple licenses to practice in more than part of the state. These rules benefit the licensed professionals as well as the general public utilizing the services of said licensees.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

These rules are necessary to implement the overall program goals identified in Iowa Code chapter 105. Costs to the agency to implement Iowa Code chapter 105 include the support staff for processing licenses and continuing education units (CEUs), an investigator, and supervisor. It also includes IT/AMANDA support staff and other office costs, the database used to store licensee information and issue licenses, and indirect costs. This specifically includes 3.6 full-time equivalent (FTE) positions

at a cost of approximately \$322,254 in FY 23. It includes a Computer Aid, Inc. (CAI), vendor at \$50,000 in FY 23. It includes expenses associated with licensing software and technology at a cost of approximately \$625,000 in FY 23. Indirect costs in FY 23 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as division administrator, legal, and fiscal support.

- Anticipated effect on state revenues:

This chapter, in particular, is not anticipated to have a significant effect on state revenues as the Board does not collect any fees in association with this particular chapter. Notably, the Board's implementation of Iowa Code chapter 105, overall, is not anticipated to have more than a 10 percent net effect on state revenue in light of Iowa Code section 105.9(5)"a." Finally, there may be some effect on state revenue due to public educational institutions providing education required by this chapter.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The costs of implementing this rulemaking are justified by the benefit of having uniform rules for the types of licenses available and the requirements to obtain the license. The rules themselves add very little cost beyond the costs substantively incurred due to the requirements of Iowa Code chapter 105. Furthermore, the cost of training, examinations, and licensing are relatively small when compared to the benefit of having properly trained workforce in this industry. When using properly licensed businesses and individuals, the public can have confidence that this important work is done safely and correctly. There are bonding and insurance requirements in cases where work is not done properly, the costs of which are statutorily required to be borne by the licensees. In the rare cases when a license is denied, the Board is complying with its duty to protect the public. The circumstances of denial decisions issued in recent years exemplify the Board's fulfillment of that duty.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has determined that the rules proposed represent the less costly or less intrusive method for licensing and exams. Notably, the Board previously provided examinations directly to licensees, but as previously discussed, the Board presently contracts with local community colleges to administer the examination. The Board believes that this is the most efficient and least costly method for all parties.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a less restrictive alternative to the requirements for licensing or examination.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking benefits licensees and small businesses because it sets forth uniform, statewide licensing requirements. Prior to statewide licensing, businesses and individuals had to carry multiple licenses for different jurisdictions across the state. This was inefficient and expensive. The current rules provide for one license to be valid across the state. If a licensee or business identifies a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 29 and adopt the following **new** chapter in lieu thereof:

CHAPTER 29
PLUMBING AND MECHANICAL SYSTEMS BOARD—APPLICATION,
LICENSURE, AND EXAMINATION

641—29.1(105) Definitions. The definitions set forth in Iowa Code section 105.1 are incorporated herein by reference. For purposes of these rules, the following definitions also apply:

“Complete criminal record” means the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“Conviction” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“Corresponding” means the same discipline.

“Directly relates” or *“directly related”* means the same as Iowa Code section 272C.1(8) “a” and “b.”

“Disconnect/reconnect plumbing technician specialty license” means a sublicense under a plumbing license to perform work from the appliance shutoff valve or fixture shutoff valve to the appliance or fixture and any part or component of the appliance or fixture, including the disconnection and reconnection of the existing appliance or fixture to the water or sewer piping and the installation of a shutoff valve no more than 3 feet from the appliance or fixture.

“Disqualifying conviction” or *“disqualifying offense”* means a conviction directly related to the practice of the profession.

“Eligibility determination” means the process by which a person who has not yet submitted a completed license application may request that the board determine whether one or more of the person's convictions are disqualifying offenses that would prevent the individual from receiving a license or certification.

“Emergency repairs” means the repair of water pipes to prevent imminent damage to property.

“Hearth systems specialty license” means a sublicense under an HVAC-refrigeration or mechanical license to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within three feet of the appliance. This sublicense is further allowed to perform work in the venting systems, log lighters, gas log sets, fireplace inserts, and freestanding stoves.

“Inactive license” means a license that is available for a plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic professional who is not actively engaged in running a business or working in the business in the corresponding discipline at that license level. An inactive license must be renewed prior to its expiration date. An inactive license is not valid for practice until the license is reactivated by the board.

“*Lapsed license*” means a license that expired prior to June 30, 2017, and was not renewed within 60 days following its expiration date or a license that expired on or after June 30, 2017, and was not renewed by the following August 31. A lapsed license is no longer valid for practice.

“*Licensee*” means any person licensed to practice pursuant to Iowa Code chapter 105.

“*Reactivated license*” means a license that is changed from inactive status to active status pursuant to rule 641—29.8(105).

“*Reissued license*” means a refrigeration or HVAC license that was changed to an HVAC-refrigeration license pursuant to rule 641—29.8(105). “Reissued license” also means an HVAC or refrigeration license and a hydronic license that was changed to a mechanical license pursuant to rule 641—29.8(105).

“*Service technician HVAC specialty license*” means a sublicense under an HVAC-refrigeration or mechanical license to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than three feet away from the appliance.

“*Surety bond*” means a performance bond written by an entity licensed to do business in this state which guarantees that a contractor will fully perform the contract and which guarantees against breach of that contract.

641—29.2(105) Available licenses and general requirements. All licenses issued by the board will be for a three-year period, except where a shorter or longer period is required or allowed by statute. Subject to the general requirements set forth herein and the minimum qualifications for licensure set forth in rule 641—29.4(105), the following licenses are available:

29.2(1) *Apprentice license.* An applicant for an apprentice license will submit an application that provides evidence of meeting the qualifications specified in Iowa Code section 105.18. If the applicant currently holds an active specialty license, place the specialty license on inactive status as specified in 641—subrule 23.8(3).

29.2(2) *Journeyman license.* An applicant for a journeyman license will submit an application that provides evidence of meeting the qualifications specified in Iowa Code section 105.18, including an applicant who possesses a master-level license and who seeks a journeyman license in the same discipline.

29.2(3) *Master license.* An applicant for a master license will submit an application that provides evidence of meeting the qualifications specified in Iowa Code section 105.18. Applicants previously licensed as a journeyman will provide evidence of at least two years of journeyman experience in the applicable discipline.

29.2(4) *Contractor license.* An applicant for a contractor license will submit an application that provides evidence of meeting the qualifications specified in Iowa Code section 105.18, and the insurance and surety bond requirements specified in Iowa Code section 105.19.

29.2(5) *Active journeyman license/inactive master license combination.* An applicant for an active journeyman license and an inactive master license in the same discipline will submit an application approved by the department, and pay the fees for both an active journeyman license and an inactive master license in accordance with subrule 29.2(3) and rule 641—29.5(105).

29.2(6) *Inactive license.* An applicant for an inactive license that does not fall within subrule 29.2(5) will submit an application approved by the Department and pay the fee for an inactive license in accordance with rule 641—29.5(105).

29.2(7) *Service technician HVAC specialty license.* An applicant for a service technician HVAC specialty license will submit an application approved by the Department and pay the fee for a specialty license in accordance with rule 641—29.5(105). It will also provide the board with evidence that:

a. The applicant possesses a valid certification from North American Technician Excellence, Inc., or an equivalent authority approved by the board, or

b. The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

29.2(8) Disconnect/reconnect plumbing technician specialty license. An applicant for a disconnect/reconnect plumbing technician specialty license will submit an application approved by the department and pay the fee for a specialty license in accordance with rule 641—29.5(105). It will also provide the board with evidence that:

a. The applicant is receiving or has previously received industry training to perform work covered under this specialty license, or

b. The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

29.2(9) Private school or college routine maintenance specialty license. An applicant for a private school or college routine maintenance specialty license will submit an application approved by the department and pay the fee for a specialty license in accordance with rule 641—29.5(105) and:

a. Provide the board with evidence that the applicant is currently employed by a private school or college.

b. Provide the board with evidence that the applicant is performing routine maintenance within the scope of employment with the private school or college.

29.2(10) Hearth systems specialty license. An applicant for a hearth systems specialty license will submit an application approved by the department and pay the fee for a specialty license in accordance with rule 641—29.5(105) and provide the board with evidence that the applicant possesses a valid certification issued by the National Fireplace Institute or equivalent authority approved by the board.

641—29.3(105) Medical gas piping certification. The following certification is required for a person who performs work as a medical gas system installer. An applicant for a medical gas certificate will submit an application approved by the department and pay the fee for a medical gas piping certification in accordance with rule 641—29.5(105) and possess valid certification from the National Inspection Testing Certification (NITC) Corporation, or an equivalent authority approved by the board. Documentation must be submitted on a form provided by the board.

641—29.4(105) Minimum qualifications for licensure. An applicant for any type of license must be at least 18 years old. All apprentice applicants must have completed a high school education or attained GED equivalent.

641—29.5(105) General requirements for application for licensure. The following criteria apply to application for licensure.

29.5(1) Application. An applicant will complete an application online or on a paper application approved by the board.

29.5(2) Fees. An application must be accompanied by the appropriate fees. All fees are nonrefundable. Fees for online applications are by credit card only. A check or money order may accompany a paper application.

29.5(3) Applicant responsibilities. An applicant for an initial license or license renewal bears full responsibility for each of the following:

a. Paying all fees charged by regulatory authorities, state or national testing or credentialing organizations, and educational institutions providing the information necessary to complete a license, certification, or renewal application;

b. Providing accurate, up-to-date, and truthful information on the application including, but not limited to, prior professional experience, education, training, criminal history, and disciplinary history; and

c. Submitting complete application materials. An application for a license or certification or renewal of a license or certification will be considered active for 90 days from the date the application is received. For purposes of establishing timely filing, the postmark on a paper submittal or the date of the electronic time stamp for online renewals will be used. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license or certification, the application will be considered incomplete and will be destroyed.

29.5(4) Verifiable documentation. No application will be considered by the board without the appropriate verifiable documentation, including:

- a. A passing score for a discipline-appropriate examination provided by the testing vendor under contract with the board, when testing is required for a license.
- b. Verification that the applicant has met the minimum requirements as defined in 641—29.4(105) and the established employment experience criteria for each type of license.
- c. Documentation of the applicant's complete criminal record, including the applicant's personal statement regarding whether each offense directly relates to the practice of the profession. No application will be considered complete unless and until the applicant responds to board requests for additional information regarding the applicant's complete criminal record.

641—29.6(105) Examination.

29.6(1) General. An applicant for licensure as a plumbing or mechanical system professional must successfully pass the licensing examination for the discipline. The examination will be specific to each license type, approved by the board, and administered by the board-approved vendor.

29.6(2) Examination.

- a. The examination will be written and proctored by a testing agency selected by the board.
- b. The examination will be offered periodically during the year. The time and location will rotate between multiple sites in the state of Iowa, as determined by the department, with approval of the board.
- c. The examination will not be subject to review by applicants. Upon request from an application, the testing vendor will provide information about the sections that the applicant failed, but shall not provide an applicant access to actual examination questions or answers. Any fees associated with the review process will be assessed by and payable to the testing vendor. The applicant is responsible for paying all associated examination fees.
- d. A score of 75 percent or better is considered passing.

29.6(3) Examination application.

- a. An applicant will complete and submit a board-approved examination application either on-line or on a paper application a minimum of 15 business days prior to taking an examination.
- b. An application must be accompanied by the appropriate fees. All fees are nonrefundable. Fees for online applications are by credit card only. A check or money order may accompany a paper application.
- c. No application will be considered by the board without the appropriate verifiable documentation.
- d. The applicant will be notified and issued an examination entrance letter upon approval of the examination application.
- e. If the applicant is notified that the application is incomplete, the applicant must contact the board office within 90 days. Incomplete applications will be considered invalid and after 90 days will be destroyed.
- f. Examination fees are payable directly to the board-approved testing vendor. All transactions are the responsibility of the applicant and testing vendor. The board is not responsible for refunds from the testing vendor.
- g. An applicant shall present current photo identification in order to sit for the examination.
- h. An applicant for licensure by examination who does not pass the examination within one year from the original application date has to submit a new application.
- i. A master examination applicant will not receive permission to sit for a master examination unless the applicant establishes that the applicant:
 - (1) Has previously been licensed as a master in the applicable discipline; or
 - (2) Has previously been licensed as a journeyman in the applicable discipline and has at least two years of journeyman experience in the applicable discipline.

j. A journeyperson examination applicant may apply to sit for the examination up to 12 months prior to completion of the 48 months of required apprentice credit, which include the granting of advanced standing or credit for previously acquired experience, training, or skills.

29.6(4) Expiration of passing examination score. An applicant who successfully passes an examination must apply for licensure in the applicable discipline at the applicable discipline level within two years of notification that the applicant successfully passed the examination. A passing examination score will expire if the applicant fails to apply for licensure within the two-year period as set forth herein, and the applicant will be required to successfully retake said examination to become licensed.

641—29.7(105) License renewal.

29.7(1) *Renewal period.* The period of licensure to operate as a contractor or work as a master, journeyperson or apprentice in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board is a period of three years. All licenses issued will expire on June 30 every three years, beginning with June 30, 2026. Fees for new licenses issued after the July 1 beginning of each three-year renewal cycle will be prorated using a one-sixth deduction for each six-month period of the renewal cycle.

29.7(2) *Renewal notification.* The licensee is responsible for renewing the license prior to its expiration.

29.7(3) *Specific renewal requirements.*

a. Active and inactive apprentice, specialty, journeyperson, and master licenses. An apprentice, specialty, journeyperson, or master licensee seeking renewal shall:

- (1) Submit an application for renewal online or on the forms provided by the board office.
- (2) Meet the continuing education requirements as set forth in rule 641—30.2(105), unless no continuing education is necessary as specified in 641—subrule 23.8(3), 30.2(2), or 30.6(1).
- (3) Include the appropriate fee as specified in 641—Chapter 28. A penalty will be assessed by the board for late renewal, as specified in 641—Chapter 28.

b. Medical gas piping certification holders. A medical gas piping certification holder seeking renewal shall:

- (1) Submit an application for renewal either electronically or on the forms provided by the board office.
- (2) Provide evidence that the person has maintained valid certification issued from the National Inspection Testing Certification (NITC) Corporation or an equivalent authority approved by the board.
- (3) Include the appropriate fee as specified in 641—Chapter 28.

c. Contractor licenses. Renewal of the contractor license constitutes registration as a contractor under Iowa Code chapter 91C. A contractor licensee seeking renewal shall:

- (1) Submit an application for renewal on the forms provided by the board office. Licensees may renew their licenses online or via paper application.
- (2) Include evidence of professional liability insurance and a surety bond mandated by subrule 29.2(4).
- (3) As specified in 875—Chapter 150, include proof of workers' compensation insurance coverage, proof of unemployment insurance compliance and, for out-of-state contractors, a bond as described in Iowa Code chapter 91C.
- (4) Include the appropriate license fee as specified in 641—Chapter 28. A penalty will be assessed by the board for late renewal, as specified in 641—Chapter 28.
- (5) Include the fee for a three-year contractor registration as specified in 875—Chapter 150.

29.7(4) *Complete and timely filed application.* Renewal applications are due 30 days prior to expiration per Iowa Code section 105.20(2). No renewal application is considered timely and sufficient until received by the board office and accompanied by all material necessary for renewal, including applicable renewal and late fees. Incomplete applications will not be accepted. For purposes of establishing timely filing, the postmark on a paper submittal or the date of the electronic time stamp for online renewals will be used.

29.7(5) *Late renewal.* A licensee has a one-month grace period after the expiration date of the license to renew without payment of a late fee.

a. A licensee who seeks to renew more than one month but less than two months after the license expiration date may renew upon payment of the late fee in the amount specified in 641—Chapter 28 in addition to the renewal fee.

b. A license remains valid for practice for up to two months past the expiration date of the license. After two months, the license lapses and becomes invalid for practice until the license is reinstated.

29.7(6) *Reinstatement.* A person seeking reinstatement of a lapsed license must submit an application for reinstatement electronically or on the forms provided by the board office and include all mandated documentation and fees.

a. A licensee who allows a license to lapse for more than two months but not more than 365 days may reinstate and renew the license upon payment of the late penalty fee in the amount specified in 641—Chapter 28 in addition to the renewal fee. A specialty, journey person or master licensee must also meet the continuing education requirements as set forth in rule 641—30.2(105), unless no continuing education is mandated as specified in 641—subrule 23.8(3), 30.2(2), or 30.6(1).

b. A person holding a specialty, journey person or master license who allows the license to lapse for more than one year may reinstate and renew the license by providing evidence of one of the following:

(1) For a journey person or master licensee, retaking and successfully passing the applicable licensing examination; or

(2) Retaking and successfully completing all continuing education requirements as set forth in rule 641—30.2(105) for each renewal period in which the license was not timely renewed.

c. A contractor licensee seeking reinstatement of a license that has been lapsed for more than one year may reinstate and renew the license by submitting evidence of meeting the requirements specified in subrule 29.7(3) and payment of any mandated fees.

d. A licensee who reinstates and renews a lapsed license is not entitled to a prorated renewal fee.

641—29.8(105) *Waiver from examination for military service.* The written examination requirements and prior experience requirements set forth in Iowa Code sections 105.18(2) “*b*”(1) and 105.18(2) “*c*” are waived for a journey person license or master license if the applicant meets the requirements set forth in Iowa Code section 105.18(4).

641—29.9(105) *Reactivation of an inactive license.*

29.9(1) An inactive license is not valid for practice but must be renewed in accordance with rule 641—29.7(105). If an inactive license has not been timely renewed and becomes lapsed, the requirements for reinstatement of the license will have to be met. A person with an inactive license that is not lapsed who is seeking to reactivate the license shall:

a. Submit a written request to the board office for active license status; and

b. Pay the fee for an active license in the amount specified in 641—Chapter 28.

29.9(2) 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 period following reactivation.

641—29.10(105) *Review of applications.*

29.10(1) Upon receipt of a completed application, the board executive officer or designee has discretion to:

a. Authorize the issuance of the license, certification, or examination application.

b. Refer the application to a committee of the board for review and consideration when the board executive officer determines that matters raised in or revealed by the application are relevant in determining the applicant’s qualifications for a license, certification, or examination. Matters that may justify referral to a committee of the board include, but are not limited to:

(1) Prior criminal history, which is reviewed and considered in accordance with Iowa Code chapter 272C and rule 641—29.13(105).

- (2) Chemical dependence.
- (3) Competency.
- (4) Physical or psychological illness or disability.
- (5) Judgments entered on, or settlements of, claims, lawsuits, or other legal actions related to the profession.
- (6) Professional disciplinary history.
- (7) Education or experience.

29.10(2) Following review and consideration of an application referred by the board executive officer, the committee may at its discretion:

- a. Authorize the issuance of the license, certification, or examination application.
- b. Recommend to the board denial of the license, certification, or examination application.
- c. Recommend to the board issuance of the license or certification under certain terms and conditions or with certain limitations.
- d. Refer the license, certification, or examination application to the board for review and consideration without recommendation.

29.10(3) Following review and consideration of a license, certification, or examination application referred by the committee, the board will:

- a. Authorize the issuance of the license, certification, or examination application;
- b. Deny the issuance of the license, certification, or examination application; or
- c. Authorize the issuance of the license or certification under certain terms and conditions or with certain limitations.

29.10(4) The committee or board may require an applicant to appear for an interview before the committee or the full board as part of the application process.

641—29.11(105) Grounds for denial of an application. The board may deny an application for license, certification, or examination for any of the following reasons:

1. Failure to meet the requirements for license, certification, or examination as specified in these rules.
2. Failure to provide accurate and truthful information, or the omission of material information.
3. Pursuant to Iowa Code section 105.22, upon any of the grounds for which licensure may be revoked or suspended.

641—29.12(105) Use of criminal convictions in eligibility determinations and initial licensing decisions.

29.12(1) License application. Unless an applicant for licensure petitions the board for an eligibility determination, the applicant's convictions will be reviewed when the board receives a completed license application.

a. *Full disclosure.* An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

b. *Documentation and personal statement.* An applicant with one or more convictions must submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

c. *Rehabilitation.* As part of the license application an applicant will submit all evidence of rehabilitation that the applicant wishes to be considered by the board. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15. An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

d. *Nonrefundable fees.* Any application fees will not be refunded if the license is denied.

29.12(2) Eligibility determination. An individual who has not yet submitted a completed license application may petition the board for an eligibility determination. An individual with a conviction does

not have to petition the board for an eligibility determination before applying for a license. To petition the board for an eligibility determination, a petitioner must submit all of the following:

- a. A completed eligibility determination form, which is available on the board's website;
- b. The complete criminal record for each of the petitioner's convictions;
- c. A personal statement regarding whether each conviction directly relates to the practice of the profession and why the board should find the petitioner is rehabilitated;
- d. All evidence of rehabilitation that the petitioner wants the board to consider; and
- e. Payment of a nonrefundable fee in the amount of \$25.

29.12(3) Appeal. A petitioner found ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board's rules governing nondisciplinary contested case proceedings apply unless otherwise specified in this rule. If the petitioner fails to timely appeal, the board's written decision will become a final order.

a. *Presiding officer.* The presiding officer will be the board. However, any party to an appeal of a license denial or ineligibility determination may file a written request, in accordance with rule 641—33.10(17A), that the presiding officer be an administrative law judge. Additionally, the board may, on its own motion, request that an administrative law judge be assigned to act as presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered will be a proposed decision.

b. *Burden.* The office of the attorney general will represent the board's initial ineligibility determination or license denial and has the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shifts to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

c. *Judicial review.* A petitioner or applicant must appeal an ineligibility determination or a license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding is in accordance with Iowa Code chapter 17A.

29.12(4) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner cannot submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant cannot submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

These rules are intended to implement Iowa Code sections 105.2, 105.5, 105.9, 105.18, 105.19, 105.20, 105.22, 272C.3, and 272C.15.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 30
“Continuing Education for Plumbing and Mechanical Systems Professionals”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4 and 272C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 105 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 30. It implements Iowa Code chapters 105 and 272C in accordance with the goals of Executive Order 10 (Jan. 10, 2023). This rulemaking sets forth continuing education requirements for plumbing and mechanical systems professionals. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards licensees need to meet to comply with the rule, the types of courses that are permissible, and procedures for applying for an exemption or extension to complete the requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are costs to the industry related to licensees obtaining and maintaining their licenses. Licensees are responsible for the cost of continuing education. Private industries offer these courses, so the Board of Plumbing and Mechanical Systems is not privy to the exact costs, but based on research, the Board estimates the costs range from \$18 (online) to \$320 (in-person) per course. The number of hours of credit from each course varies as well. There are multiple entities that provide continuing education courses to licensees.

There are costs to the agency for staff to administer the program. This includes processing staff, an investigator, and a supervisor/board executive. There are also costs associated with the database that houses all of the data related to licensure.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that plumbing and mechanical systems professionals maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety. This benefits the professionals as well as the general public utilizing the services offered by these professionals.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industries, including professional associations and businesses, offer these courses. The Board does not set these costs nor does it track these costs. The Board researched online and in-person course options and expenses.

The Board looked at seven different providers and 12 different courses to compare costs and options of online courses. The number of hours earned varied, but the average course costs \$78 with a range of \$18 to \$160.

The Board looked at seven different providers and 27 different courses to compare costs and options of in-person courses. The number of hours earned varied, but the average course costs \$241 with a range of \$85 to \$320. Several providers offer a full-day in-person course that meets all the requirements for one license. Those courses range from \$165 to \$320, depending on an organizational membership.

- Qualitative description of impact:

These rules are necessary to implement the overall program goals identified in Iowa Code chapter 105. The public is protected by having an appropriately qualified and trained workforce in the industry. There are multiple examples of unqualified and unlicensed individuals who have created hazardous situations due to improper installation or repair of plumbing and mechanical systems.

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

These rules are necessary to implement the overall program goals identified in Iowa Code chapter 105. Costs identified are not specific to this chapter, but to implement Iowa Code chapter 105 and include the support staff for processing licenses and continuing education units (CEUs), an investigator, and supervisor. It also includes IT/AMANDA support staff and other office costs, the database used to store licensee information and issue licenses, and indirect costs. This specifically includes 3.6 full-time equivalent (FTE) positions at a cost of approximately \$322,254 in FY 2023. It includes a Computer Aid, Inc., vendor at \$50,000 in FY 2023. It includes expenses associated with licensing software and technology at a cost of approximately \$625,000 in FY 2023. Indirect costs in FY 2023 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as division administrator, legal, and fiscal support.

- Anticipated effect on state revenues:

Costs incurred by the licensee in compliance with this chapter are paid directly to the educational institutions and do not affect state revenues. Furthermore, there are no specific costs to the Board in administering this chapter; all administration expenses are attributable to general implementation of Iowa Code chapter 105 and defrayed by license fees.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours may reduce/eliminate the cost to the licensee to meet these requirements. However, the Board believes there could be an impact to public safety if continuing education requirements were reduced or eliminated. This could lead to more complaints,

investigations and ultimately public discipline. The rules themselves add relatively little cost beyond any costs substantively incurred. The cost of continuing education is relatively small when compared to the benefit of having a properly trained workforce in this industry. When using properly trained individuals, the public can have confidence that this important work is done safely and correctly.

Reducing or eliminating continuing education would also create a loss of revenue for the private industries that offer these courses.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce or eliminate the continuing education requirements. The Board believes the current requirement adequately provides the intended benefit of the rulemaking. The cost of continuing education is relatively small when compared to the benefit of having a properly trained workforce in this industry.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board is required to establish continuing education requirements pursuant to Iowa Code sections 105.20 and 272C.2. Accordingly, no alternative methods have been identified for consideration.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Plumbing and mechanical systems professionals practice in a number of settings including small businesses and large corporations. The cost of continuing education could be greater for small business owners because they would be responsible for the entire cost. However, the need for up-to-date practice standards exists whether the corporation is small or large. Notably, however, the proposed rules specifically provide for automatic exceptions to the continuing education requirements, permissive exceptions, and provide for extensions of continuing education deadlines. Furthermore, if a licensee identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, the licensee could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 30 and adopt the following new chapter in lieu thereof:

CHAPTER 30
CONTINUING EDUCATION FOR PLUMBING AND
MECHANICAL SYSTEMS PROFESSIONALS

641—30.1(105) Definitions. The definitions set forth in Iowa Code section 105.1 are incorporated herein by reference. For the purpose of these rules, the following definitions apply:

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Compliance review*” means the selection by the board of licensees for verification of satisfactory completion of continuing education requirements during a specified continuing education compliance period.

“*Continuing education*” means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee’s knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“*Continuing education compliance period*” means the period between renewals during which a licensee must obtain the requisite amount of continuing education in order to renew the licensee’s license.

“*Hour of continuing education*” means at least 50 minutes spent in one sitting by a licensee in actual attendance at and in completion of an approved continuing education activity.

“*Iowa mechanical code*” means the most current version of the International Mechanical Code, as adopted and amended by the board.

“*Iowa plumbing code*” means the most current version of the Uniform Plumbing Code, as adopted and amended by the board.

“*License*” means a license to practice pursuant to Iowa Code chapter 105.

“*Licensee*” means any person licensed to work in a specific discipline covered under Iowa Code chapter 105.

641—30.2(105) Continuing education requirements.

30.2(1) The continuing education compliance period begins on the license issue date and ends on the license expiration date.

30.2(2) During each continuing education compliance period, each active or inactive master and journeyman licensee shall obtain the following continuing education:

a. Safety education. Two hours of continuing education in the content area of the Iowa Occupational Safety and Health Act if holding a single license and four hours if holding multiple licenses.

b. Code education.

(1) Two hours of continuing education in the content area of the Iowa mechanical code if holding one or more licenses or sublicenses in a mechanical discipline.

(2) Two hours of continuing education in the content area of the Iowa plumbing code if holding a plumbing license or sublicense.

c. Discipline education.

(1) Four hours of continuing education in the discipline in which the licensee holds a license if the licensee holds a single plumbing license or sublicense, or a single license or sublicense in a mechanical discipline.

(2) Eight hours of continuing education in the relevant disciplines if holding multiple licenses or sublicenses.

d. Private school or college maintenance specialty license. For the purposes of this subrule, a private school or college routine maintenance specialty license is considered to be a sublicense of whatever discipline(s) in which the licensee actually practices.

e. An individual possessing one or more inactive special restricted licenses under 641—subrule 23.8(3) does not have to complete any continuing education hours for the special restricted license so long as the person remains actively licensed as an apprentice.

30.2(3) Up to one-half of board-approved continuing education mandated by subrule 30.2(2), each continuing education compliance period may be obtained through completion of computer-based, including online, continuing education programs/activities approved by the board.

30.2(4) It is each licensee's responsibility to maintain a record of all continuing education courses attended and retain proof of compliance with the continuing education requirements. Licensees may attend a continuing education course more than once during a continuing education compliance period. However, licensees who attend a course more than once cannot count the approved hours for that course toward the applicable continuing education requirement more than once during the continuing education compliance period.

30.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

30.2(6) A licensee who is a presenter of a board-approved continuing education program may receive credit once per continuing education compliance period for the presentation of the program. The licensee may receive the same number of hours granted the attendees.

641—30.3(105) Continuing education programs/activities.

30.3(1) *Standards for continuing education programs/activities.* A program/activity is appropriate for continuing education credit if the program/activity meets all of the following criteria:

- a.* Is board-approved;
- b.* Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;
- c.* Pertains to subject matters that integrally relate to the practice of the discipline;
- d.* Is conducted by individuals who have obtained board approval as set forth in subrule 30.4(1). This criterion is not computer-based continuing education programs/activities conducted pursuant to subrule 30.2(3);

- e.* Fulfills stated program goals, objectives, or both; and

- f.* Covers product knowledge, methods, and systems of one or more of the following:

- (1) The theory and technique for a specific discipline;
- (2) The current Iowa plumbing code, Iowa mechanical code, or both;
- (3) The standards comprising the current Iowa Occupational Safety and Health Act.

30.3(2) *Board approval.* Board approval for specific programs/activities under paragraph 30.3(1) "a" will be valid for three years.

30.3(3) *Procedure and standards for board approval of continuing education programs/activities.*

a. For non-computer-based continuing education programs/activities, an individual or entity seeking board approval shall:

- (1) File an application in the form prescribed by the board without alteration at least 60 days prior to the first scheduled course date;
- (2) Attach a copy of the course or activity outline or syllabus which, at a minimum, specifically identifies the course content and a breakdown of the student contact hours; and
- (3) Attach a schedule of courses, if known, indicating the course's or activity's proposed scheduled locations, dates, and times.

b. For computer-based continuing education programs/activities, an individual or entity seeking board approval shall:

- (1) File an application in the form prescribed by the board without alteration;
- (2) Attach a copy of the course or activity outline or syllabus which, at a minimum, specifically identifies the course content and a breakdown of the student contact hours;
- (3) Attach a schedule of courses, if known, indicating the course's or activity's proposed scheduled locations, dates, and times;
- (4) Provide a brief summary of the training product;
- (5) Provide a copy of the visual aids, or other materials included with the course or activity; and

(6) Provide the names, contact information, and qualifications or résumés of the training designers.

30.3(4) Board member attendance. With board approval, board members may attend any board-approved continuing education program/activity for purposes of determining whether the continuing education program/activity complies with these rules. In the event a board member attends a board-approved continuing education program/activity with the purpose of determining whether the continuing education program/activity complies with these rules, the board member cannot receive any continuing education credit for those hours in attendance.

641—30.4(105) Course instructor(s).

30.4(1) Procedure and standards for board approval of instructors. An individual seeking board approval to instruct continuing education programs/activities will:

- a. File an application in the form prescribed by the board without alteration;
- b. Attach copies of documents, licensures, degrees, and other materials demonstrating compliance with the requirements for the type of continuing education program/activity as set forth below.

(1) If seeking approval to instruct in the content area of the Iowa Occupational Safety and Health Act, an individual must either possess and maintain a current Occupational Safety and Health Act 500, 501, 502, or 503 card or completion certificate, or both, or possess a current train-the-trainer or instructor card or other certification or safety-related degree or diploma issued by the American Heart Association, American Red Cross, National Safety Council, Board of Certified Safety Professionals, or board-approved equivalent.

(2) If seeking approval to instruct in the content area of the Iowa plumbing code or Iowa mechanical code, or both, an individual must:

1. Possess a current license issued by the board at the journey or master level in the applicable discipline under that code,
 2. Possess a current license as a professional engineer under Iowa Code chapter 542B,
 3. Present evidence of having taught at least eight contact hours in the applicable code within the last three years,
 4. Possess a current inspector or plans examiner certificate issued by a code body in the discipline,
- or
5. Demonstrate equivalent specialized education or training.

(3) If seeking approval to instruct in the content area of a practice discipline, an individual must:

1. Possess a current license issued by the board at the journey or master level in the applicable discipline,
2. Possess a current license as a professional engineer under Iowa Code chapter 542B,
3. Provide evidence of employment as a product representative with manufacturer training,
4. Present evidence of having taught at least eight contact hours in the applicable discipline within the last year, or
5. Demonstrate equivalent specialized education or training.

30.4(2) Board approval. Board approval for an instructor under subrule 30.4(1) will be valid for three years.

641—30.5(105) Compliance review of continuing education requirements. The board may conduct a review of a licensee's license renewal application to determine compliance with continuing education requirements.

30.5(1) Upon board request, the licensee must submit to the board an individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor or course instructor containing the course title, date(s), contact hours, sponsor's name, and licensee's name. In some instances, licensees will be requested to provide to the board additional information including, but not limited to, program content, objectives, presenters, location, and schedule. An inclusive brochure may be acceptable.

30.5(2) A licensee must submit all information set forth in subrule 30.5(1) within 30 calendar days following the board's request. The board may grant extensions on an individual basis.

30.5(3) If the submitted materials are incomplete or unsatisfactory and the board determines that the deficiency was the result of good faith conduct on the part of the licensee, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit. A licensee must complete the continuing education hours and submit documentation establishing completion of the required make-up continuing education hours to the board within 120 calendar days from the date of the board's finding of good-faith conduct.

30.5(4) A licensee's failure to provide the board with an accurate mailing address is not an excuse for noncompliance with this rule.

641—30.6(105) Continuing education exemptions.

30.6(1) Automatic exemptions. A licensee will be exempt from the continuing education requirement during the continuing education compliance period when that person:

- a. Served honorably on active duty in the military service;
- b. Resided in another state or district having continuing education requirements for the discipline and met all mandates of that state or district for practice therein;
- c. Was a government employee working in the licensee's specialty and assigned to duty outside the United States;
- d. Was absent from the state but engaged in active practice under circumstances which are approved by the board;
- e. Obtained a journeyperson license by examination provided that the licensee maintains the same renewal date as the licensee's apprentice license. This automatic exemption only applies to the licensee's first renewal of the journeyperson license;
- f. Obtained a specialty, journeyperson, or master license with less than one year remaining in the continuing education compliance period. This exemption applies only to the licensee's first renewal of that license and only to each license that was issued with less than one year remaining in the continuing education compliance period; or
- g. Possesses an inactive specialty license under 641—subrule 23.8(3) and is also actively licensed as an apprentice.

30.6(2) Permissive exemptions. The board may, in cases involving exceptional hardship or extenuating circumstances, grant an exemption from some or all of the continuing education requirements.

- a. A licensee seeking a permissive exemption will apply to the board, in such form as the board may prescribe.
- b. A licensee seeking a permissive exemption will provide all such documentary evidence as the board may request to establish the exceptional hardship or extenuating circumstances.
- c. In the event of a claimed physical or mental disability or illness, the board may request information from a licensed health care professional who can attest to the existence of any such disability or illness.
- d. A licensee who applies for a permissive exemption will be notified in writing of the board's decision.
- e. In granting an exemption, the board may impose any such additional conditions on the exemption including, but not limited to, the requirement that the licensee make up a portion of the continuing education requirements.
- f. In lieu of granting a full or partial exemption, the board may grant the licensee an extension of time in which to complete the continuing education requirements.
- g. The granting of an exemption will not keep a licensee from seeking, or the board from granting, an exemption in a subsequent biennial continuing education compliance period(s).
- h. Permissive exemptions will only be granted in the most exceptional and extraordinary of circumstances.

641—30.7(105) Continuing education extensions. The board may, in individual cases involving hardship or extenuating circumstances, grant an extension of time within which to fulfill the minimum

continuing education requirements if the request for extension is made prior to the license expiration date. Hardship or extenuating circumstances include documented circumstances beyond the control of the licensee which prevent attendance at necessary activities.

641—30.8(105) Continuing education reporting requirements.

30.8(1) *Non-computer-based continuing education programs/activities.* For non-computer-based continuing education programs/activities, at the conclusion of each continuing education course, the course instructor will:

a. Inform each attending licensee that a survey of the course and instructor may be completed and submitted by the licensee to the board through either a board-approved written or online evaluation form.

b. Provide a certificate of completion to each licensee who attends the course. The certificate of completion will include the following information:

- (1) The licensee's full name and board-issued license number;
- (2) The course name or title;
- (3) The board-approved course identification number;
- (4) The date of the course;
- (5) The number of program contact hours;
- (6) The instructor's full name and board-approved identification number; and
- (7) The instructor's signature.

c. Submit to the board a typed or electronic course completion roster within 30 days following the completion of the course. The course completion roster will contain the following information:

- (1) The full name and board-issued license number of each attending licensee;
- (2) The course name or title;
- (3) The board-approved course identification number;
- (4) The date of the course;
- (5) The location of the course;
- (6) The number of program contact hours;
- (7) The instructor's full name and board-approved identification number; and
- (8) The instructor's signature.

30.8(2) *Computer-based continuing education programs/activities.* For computer-based continuing education programs/activities under subrule 30.2(3), at the conclusion of each computer-based continuing education course, the person authorized to monitor and verify attendance/course completion will:

a. Provide a certificate of completion to each licensee who completes the course. The certificate of completion will include the following information:

- (1) The licensee's full name and board-issued license number;
- (2) The course name or title;
- (3) The board-approved course identification number;
- (4) The date the course was completed; and
- (5) The number of program contact hours.

b. Submit to the board a typed or electronic course completion roster within 30 days following a licensee's completion of a computer-based continuing education course. The course completion roster will contain the following information:

- (1) The full name and board-issued license number of each attending licensee;
- (2) The course name or title;
- (3) The board-approved course identification number;
- (4) The date of the course;
- (5) The location of the course; and
- (6) The number of program contact hours.

These rules are intended to implement Iowa Code chapters 105 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 32
“Plumbing and Mechanical Systems Board—Licensee Discipline”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4 and 272C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 105 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 32 and implements Iowa Code chapters 105 and 272C in accordance with the goals of Executive Order 10 (Jan. 10, 2023). This rulemaking sets forth the grounds for discipline, methods of discipline and factors the Board of Plumbing and Mechanical Systems may consider in determining the nature and severity of the disciplinary sanction to be imposed, provides for the imposition of civil penalties, and sets forth procedures for the appeal of disciplinary action and collection of civil penalties. This is important to both the public and the licensee because it creates a shared understanding of what is and is not appropriate for these licensed individuals and procedures upon the identification of noncompliance.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees and the agency bear the costs associated with these proposed rules. The licensee may be ordered to pay civil penalties as a result of a disciplinary action. Staff salaries to support the work of the Board are necessary to implement licensee discipline.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefits of the proposed rules are to ensure public safety and maintain a high standard of practice for Iowans. The public is undoubtedly the class most benefited by disciplinary regulation. In order to regulate the profession as directed in statute, the Board needs discipline authority to ensure protection of the public when a standard of care is violated. Discipline ensures corrective action of licensees not abiding by requirements established to reduce harm to the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are 11,629 licensed individuals and 2,035 licensed businesses. In 2022, the Board received 68 complaints which resulted in 97 investigations. The Board issued 66 disciplinary actions, including 59 for unlicensed work. Many of the complaints for nonlicensed individuals come from properly licensed individuals and businesses. Generally, first offense actions for nonlicensed work are relatively small (\$500 per violation) and get settled for even less (\$250 per violation), provided that the individual and/or business get properly licensed. The Board has consistently taken the approach that getting nonlicensed individuals and/or businesses properly trained and licensed is the priority and the best way to protect the public. The rules provide consistent guidance to and appropriate regulation of the industry to meet the public safety goals espoused by Iowa Code chapter 105 and these implementing rules.

- Qualitative description of impact:

The cost of ensuring proper licensure is relatively small when compared to the benefit of having a properly trained and supervised workforce in this industry. When using properly licensed businesses and individuals, the public can have confidence that this important work is done safely and correctly.

The costs for the individual licensees are those incurred in the course of obtaining and maintaining their licenses. The costs for contractor licensees are those incurred in the course of obtaining and maintaining proper bonding and insurance. The costs to licensees include the license fees, which are described in 641—Chapter 28. There are also costs associated with continuing education courses or apprenticeship programs. Those costs vary depending on the type and number of licenses an individual has to maintain. Estimated continuing education unit (CEU) costs are described in the analysis for 641—Chapter 30.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The agency incurs costs in the form of staff needed to manage Board activities, including reviewing complaints, conducting investigations, and enforcing licensee discipline. The Board has one investigator that follows up on any alleged violations of rules of this chapter as required by Iowa Code section 105.28. There are also costs for the database that houses all of the information needed for licensure.

Notably, costs to the agency in implementing Iowa Code chapter 105, overall, include the support staff for processing licenses and CEUs, an investigator, and supervisor. It also includes IT/AMANDA support staff and other office costs, the database used to store licensee information and issue licenses, and indirect costs. This specifically includes 3.6 full-time equivalent (FTE) positions at a cost of approximately \$322,254 in FY 2023. It includes a Computer Aid, Inc., vendor at \$50,000 in FY 2023. It includes expenses associated with licensing software and technology at a cost of approximately \$625,000 in FY 2023. Indirect costs in FY 2023 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as division administrator, legal, and fiscal support.

- Anticipated effect on state revenues:

Any civil penalties that are collected due to noncompliance increase state revenues. In FY 2022, there were \$8,300 in civil penalty fines collected. In FY 2023, there were \$2,750 in civil penalty fines collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The rules themselves add very little cost beyond any costs substantively incurred due to the requirements of Iowa Code chapter 105. Furthermore, the cost of ensuring proper licensure is relatively small when compared to the benefit of having properly trained and supervised workforce in this industry. When using properly licensed businesses and individuals, the public can have confidence that this important work is done safely and correctly.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Prior to statewide licensing in 2010, local jurisdictions had their own licensing requirements or none at all. There was no uniformity in the way discipline was handled and no way for the public to easily know what individuals and business had disciplinary issues. There is now uniformity for licensing and discipline and the entire industry is following the same rules due to the requirements of Iowa Code chapter 105 and rules discussed herein that clarify and implement it. Disciplinary actions are publicly available in one location.

The Board could consider reducing or eliminating grounds for discipline as a potentially “less intrusive” method of implementing Iowa Code chapter 105, but the Board believes the grounds for discipline set forth in the proposed rules are reasonable and important in order to ensure high-quality services for all Iowans.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Alternative methods could include reducing or eliminating grounds for discipline, but the Board believes the requirements, as set out in this rulemaking, are important in order to ensure high-quality services for all Iowans.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for the licensed professional. While some licensees may be running or working for a small business, others work for large corporations. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

The impact on small business is already believed to be at the lowest level available in order to reasonably implement and carry out the duties of the agency in 641—Chapter 105. One of the positions on the Board is specific to a contractor primarily working in rural Iowa, which is likely a small business. If a small business subject to this chapter identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department’s established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 32 and adopt the following new chapter in lieu thereof:

CHAPTER 32
PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE DISCIPLINE

641—32.1(105,272C) Definitions. The definitions set forth in Iowa Code section 105.1 are incorporated herein by reference. For purposes of this chapter, the following definitions also apply:

“*Conviction*” means the same as defined in 641—Chapter 29.

“*Directly relates*” or “*directly related*” means the same as Iowa Code section 272C.1(8) “a” and “b.”

“*Discipline*” means any sanction the board may impose upon licensees.

“*Disqualifying conviction*” or “*disqualifying offense*” means the same as in 641—Chapter 29.

“*Lapsed license*” means a license that has expired. A lapsed license is no longer valid for practice.

“*Licensee*” means any person licensed to practice pursuant to Iowa Code chapter 105.

641—32.2(105,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 641—32.3(105,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

32.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of inspections, appeals, and licensing any false or forged diploma, certificate, affidavit, identification or qualification in making an application for a license in this state.

32.2(2) Professional incompetence. Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the applicable licensed trade.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by others licensed in the applicable trade in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average licensee in the applicable trade acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensee in the applicable trade in this state.

e. Inability to practice in the trade with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

32.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

32.2(4) Habitual intoxication or addiction to the use of drugs.

32.2(5) Conviction of a disqualifying offense in the courts of this state or another state, territory, or country. A file-stamped copy of the final order or judgment or conviction or plea of guilty in this state or another state, territory, or country constitutes conclusive evidence of the conviction.

32.2(6) Fraud in representations as to skill or ability.

32.2(7) Use of untruthful or improbable statements in advertisements.

32.2(8) Willful or repeated violations of Iowa Code chapter 105 or 272C.

32.2(9) Violation of a board rule.

32.2(10) Nonpayment of a state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 641—Chapter 194.

32.2(11) Permitting another person to use the licensee's wall certificate, wallet card, or license number for any purpose.

32.2(12) Failure to timely submit the requested materials in response to a compliance review conducted pursuant to 641—30.5(105).

32.2(13) Failure to meet the continuing education requirements for licensure.

32.2(14) Submission of a false report of continuing education.

32.2(15) Failure to pay any outstanding fees or costs owed to the board.

32.2(16) Acceptance of any fee by fraud or misrepresentation.

32.2(17) Negligence by the licensee in the practice of the trade. Negligence by the licensee in the practice of the trade includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions which impair the ability to safely and skillfully practice the trade.

32.2(18) Violation of a law, ordinance, or regulation of this state, or a political subdivision therein, another state, or the United States, which relates to the practice of the profession.

32.2(19) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court does not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report will be expunged from the records of the board.

32.2(20) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice in the trade in another state, district, territory, or country.

32.2(21) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

32.2(22) Failure to notify the board within 30 days after the occurrence of any judgment entered on or settlement of a claim or action related to the profession.

32.2(23) Engaging in any conduct that subverts or attempts to subvert a board investigation.

32.2(24) Failure to comply with a subpoena issued by the board or otherwise fail to cooperate with an investigation of the board.

32.2(25) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

32.2(26) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

32.2(27) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice a trade included in Iowa Code chapter 105.

32.2(28) Failure to report a change in name or address within 30 days after it occurs.

32.2(29) Representing oneself as a licensed tradesperson when one's license has been suspended or revoked or when the license is on inactive status.

32.2(30) Permitting another person to use the licensee's license for any purpose.

32.2(31) Permitting an unlicensed employee or person under the licensee's control to perform activities necessitating a license.

32.2(32) Failure to apply and obtain a permit prior to performing work, if mandated by the state or a political subdivision therein.

32.2(33) Failure to pay all inspection fees, if required by the state or a political subdivision therein.

32.2(34) Failure to pay a permit fee, if required by the state or a political subdivision therein.

32.2(35) Practice outside the scope of the license, which includes, but is not limited to:

a. Practicing as a journeyman without the supervision of a master.

b. Practicing in a trade for which the licensee does not hold a board-issued license.

c. Contracting for plumbing or mechanical work in the state of Iowa without a board-issued contractor license.

32.2(36) Practicing on a lapsed license.

32.2(37) Practicing as a contractor without valid bonding or insurance, as mandated by Iowa Code section 105.19.

641—32.3(105,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Mandate additional education or training.
6. Mandate a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$5,000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

641—32.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

641—32.5(105) Civil penalties—unlicensed penalties. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 105.27(1). In addition to the procedures set forth in Iowa Code chapters 105 and 272C, this chapter applies.

32.5(1) Unlawful practices. Practices by an unlicensed person which are subject to civil penalties include, but are not limited to:

- a.* Acts or practices by unlicensed persons which necessitate licensure to install or repair plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems under Iowa Code chapter 105.
- b.* Acts or practices by unlicensed persons which necessitate certification to install or repair medical gas piping systems under Iowa Code chapter 105.
- c.* Engaging in the business of designing, installing, or repairing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems without employing a licensed master.
- d.* Providing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems services on a contractual basis.
- e.* Use or attempted use of a licensee's certificate or wallet card or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.
- f.* Falsely impersonating a person licensed under Iowa Code chapter 105.
- g.* Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
- h.* Other violations of Iowa Code chapter 105.

i. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

32.5(2) Investigations. The board is authorized by Iowa Code section 17A.13(1) and Iowa Code chapters 105 and 272C to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

32.5(3) Subpoenas. Pursuant to Iowa Code section 17A.13(1) and Iowa Code chapter 105, the board is authorized in connection with an investigation of an unlicensed person to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in rule 641—34.5(105).

32.5(4) Notice of intent to impose civil penalties. Notice of the board's intent to order compliance with Iowa Code chapter 105 and impose a civil penalty will be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.

b. Reference to the particular sections of the statutes and rules involved.

c. A short, plain statement of the alleged unlawful practices.

d. The dollar amount of the proposed civil penalty and the nature of the intended order.

e. Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.

f. The address to which written request for hearing must be made.

32.5(5) Requests for hearings.

a. Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

b. If a request for hearing is not timely made, or if the nonlicensee waives in writing the right to hearing and agrees to pay the penalty, the board chairperson, the chairperson's designee, or the board executive may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 105, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

c. If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

d. Subsequent to the issuance of a notice of hearing under this subrule, the settlement agreement provisions of 641—33.23(272C) apply.

e. The notice of intent to issue an order and the order are public records pursuant to Iowa Code chapter 22. Copies may be published. Hearings are open to the public.

32.5(6) Factors for board consideration. The board may consider the following when determining the amount of civil penalty to impose, if any:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to or resulting in the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The welfare or best interest of the public.

32.5(7) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement.

32.5(8) Judicial review.

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board will notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 105.27(4).

641—32.6(105,272C) Collection of delinquent civil penalties and discipline-related debts.

32.6(1) The board may participate in an income setoff program administered by the department of revenue in accordance with Iowa Code section 421.65 and rules promulgated thereunder.

32.6(2) Definitions. For purposes of this rule, the following definitions apply:

“Debtor” means any person who owes a debt to the board as a result of a proceeding in which notice and opportunity to be heard was afforded.

“Income offset program” means the program established in Iowa Code section 421.65 and any rules promulgated thereunder through which the department of revenue coordinates with state agencies to satisfy liabilities owed to those state agencies.

32.6(3) The board office may provide the department of administrative services a liability file containing pertinent information for the identification of the debtor and liability, including if the status of a debt changes due to payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

32.6(4) Due diligence.

a. Before submitting debtor information to the outstanding liability file, the board office will make a good faith attempt to collect from the debtor. Such attempt will include at least all of the following:

- (1) A telephone call requesting payment.
- (2) An initial letter to the debtor’s last discernible address requesting payment within 15 days.
- (3) A second letter to the debtor’s last discernible address requesting payment within 10 days.

b. The board office will document due diligence and retain such documentation.

32.6(5) Notification of offset. Within 10 calendar days of receiving notification from the department of revenue that the debtor is entitled to a payment subject to the setoff program, the board office will:

a. Send a preoffset notice to the debtor. The preoffset notice will inform the debtor of the amount the department intends to claim, including all of the following information:

- (1) The board’s right to the payment in question.
- (2) The board’s right to recover the payment through the setoff procedure.
- (3) The basis of the board’s case in regard to the debt.
- (4) The right of the debtor to request, in accordance with subrule 32.6(6) and within 15 days of the mailing of the preoffset notice, a split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.
- (5) The debtor’s right to appeal the offset, in accordance with subrule 32.6(7) and within 15 days of the mailing of the preoffset notice, and the procedure to follow in that appeal.
- (6) The board office’s contact information in case of questions.

b. Notify the department of revenue that the preoffset notice has been sent to the debtor, and supply a copy of the preoffset notice to the department of revenue.

32.6(6) Request to divide a jointly or commonly owned right to payment.

a. A debtor who receives a preoffset notice may request release of a joint or common owner’s share, if the request is received by the board within 15 days of the date the preoffset notice is mailed.

b. In conjunction with such a request, the debtor shall provide to the board the full name and social security number of any joint or common owner.

c. Upon receipt of such a request, the board office will notify the department of revenue of the request.

32.6(7) Appeal process. A debtor who receives a preoffset notice may request an appeal of the underlying debt within 15 days of the date the preoffset notice is mailed. A contested case appeal will be conducted pursuant to 641—Chapter 33. The board will notify the department of revenue within 45 days of the notification of setoff. The board will hold a payment in abeyance until the final disposition of the contested liability or setoff.

32.6(8) Once any setoff has been completed, the board office will notify the debtor of the action taken, and what balance, if any, remains owing to the board.

These rules are intended to implement Iowa Code chapters 105 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 33
“Plumbing and Mechanical Systems Board—Contested Cases”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 105, and 272C;
2023 Iowa Acts, Senate File 514; and Executive Order 10 (Jan. 10, 2023)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 33 and implements Iowa Code chapters 17A, 105, and 272C; and 2023 Iowa Acts, Senate File 514, in accordance with the goals of Executive Order 10 (Jan. 10, 2023). This proposed rulemaking addresses contested case hearings, including time requirements for taking action on a contested case; direction on the service of the statement of charges and notice of hearing, as well as the required contents of the statement of charges and notice of hearing; the discovery process, including issuance of subpoenas; the handling of pretrial motions and conferences; and procedures for the hearings and post-hearing motions and appeals. The purpose of the proposed rulemaking is to provide the licensee an outline of how a contested case proceeding is initiated and the rights and responsibilities of the licensee during that process. The proposed rules ensure the licensee is aware of how a contested case begins, how the licensee can gather information to prepare for the hearing, and the potential result of the hearing.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The licensee may incur costs during the investigation and contested case hearing process, including potential costs related to legal representation. The Department incurs costs including Plumbing and Mechanical Systems Board staff to investigate the complaints, prepare the investigative files for Board review, and hold the contested case hearings.

- Classes of persons that will benefit from the proposed rulemaking:

The public and licensees benefit from the proposed rules. The rules set forth procedures that ensure due process for licensees. The public benefits from the assurance that allegations of noncompliance are taken seriously and procedures exist to investigate and hold contested case proceedings when disciplinary action is required.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The licensee may incur costs for legal representation during a contested case hearing. Additional costs may include examination and responding to discovery requests and service of subpoenas, or the recording and transcribing of records should the case proceed to judicial review.

The Board incurs costs for service by mail, publication or personal service at the initiation of a contested case hearing, as well as the staff necessary to conduct the contested case hearing. The Board does have the option to consolidate cases if the licensee has more than one complaint filed against the licensee at the same time. This allows for more efficient use of time and resources for both the Board and the licensee. The Board members also incur costs associated with their time and travel since the Board is not compensated in any form.

In 2022, the Board received 68 complaints that resulted in 97 investigations. The Board issued 66 disciplinary actions, including 59 for unlicensed work. Two of the disciplinary actions proceeded through to a contested case hearing.

- Qualitative description of impact:

The process for contested cases is largely dictated by Iowa Code section 17A.12. The Board believes the proposed rules provide a balanced regulatory process for initiating and holding contested case hearings. The rules ensure licensees are aware of their rights and responsibilities when a contested case is set and also provide licensees with guidance on what the licensee can do in terms of legal representation, discovery requests, and options after the Board issues a final order. Without these rules, Boards would have large discretion on how to conduct contested hearings and implement discipline against licensees and the licensees would not have appropriate procedures in place to contest allegations in an adversarial fashion. The rules ensure due process is afforded to licensees.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department incurs costs in the form of Board staff, and procedural costs to carry out these rules. The Board staff assist with preparing the notices for hearing and correspondence with the licensee to set hearings. The Board is responsible for ensuring process of service on the licensee to initiate the contested case that includes costs to serve the licensee by mail, publication or personal service. The Board does attempt to utilize the least expensive option (service by mail) before opting for an alternative service option.

Costs to the agency in implementing Iowa Code chapter 105 overall include the support staff for processing licenses and continuing education units (CEUs), an investigator, and supervisor. This specifically includes 3.6 full-time equivalent (FTE) positions at a cost of approximately \$322,254 in FY 2023. Indirect costs in FY 2023 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as division administrator, legal, and fiscal support.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues. Staffing costs noted above are attributable to the totality of implementing Iowa Code chapter 105 and are defrayed by licensee fees (see 641—Chapter 28).

During contested case hearings, the boards utilize an administrative law judge to preside over the hearing and provide rulings on pre-hearing motions. The administrative law judge is paid through state funds. The Board does not have data on the administrative law judge salaries or the percentage of work completed by the administrative law judge on behalf of the boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Without these proposed rules, the Board would have significant discretion as to the conduct of contested hearings and licensees would not have procedures in place to contest allegations in an adversarial fashion. The rules ensure due process is afforded to licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The process for contested case hearings is largely dictated by Iowa Code chapter 17A. The Board does have the option to consolidate cases if the licensee has more than one complaint filed against the licensee at the same time. The Board also has procedures in place for contested case hearings where there is no factual dispute. This allows for more efficient use of time and resources for both the Board and the licensee.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The process for contested cases is largely dictated by Iowa Code chapter 17A. Alternative methods were not identified.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

While some licensees could be running a small business, some also work for large businesses. The Board does recognize that the impact of a contested case could certainly be greater to a small business than it would to a large company, for instance, to carve time out of the schedule for a small business owner to be present for hearing. However, the proposed rules ensure due process for all licensees including small business licensees.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33 PLUMBING AND MECHANICAL SYSTEMS BOARD—CONTESTED CASES

641—33.1(17A,105,272C) Scope and applicability. This chapter applies to contested case proceedings conducted by the plumbing and mechanical systems board.

641—33.2(17A,105,272C) Definitions. Except where otherwise specifically defined by law:

“*Board*” means the plumbing and mechanical systems board as established pursuant to Iowa Code section 105.3.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Executive officer*” means the executive officer for the plumbing and mechanical systems board.

“*Issuance*” means the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified by rule or in the order.

“*License*” means a license, registration, certificate, permit or other form of practice permission required by Iowa Code chapter 105.

“*Party*” means the state of Iowa, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent, or an intervenor.

“*Presiding officer*” means the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code sections 272C.6(1) and (2) in a disciplinary contested case.

641—33.3(17A) Time requirements.

33.3(1) Time will be computed as provided in Iowa Code section 4.1(34).

33.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.

641—33.4(17A,272C) Probable cause. If the board finds there is probable cause for taking disciplinary action against a licensee, the board will order a contested case hearing commenced by the filing and service of a statement of charges and notice of hearing.

641—33.5(17A,272C) Informal settlement. The board, its staff or agent, or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges will be filed simultaneously with a consent order, whether as separate or combined documents. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order has the force and effect of a final disciplinary order entered in a contested case and is an open record. Matters not involving licensee discipline that culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 641—33.23(272C).

641—33.6(17A) Statement of charges.

33.6(1) *Legal review.* Every statement of charges and notice of hearing prepared by the board will be reviewed by the office of the attorney general before it is filed.

33.6(2) *Delivery.* Delivery of the statement of charges and notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by personal service or publication as provided in the Iowa Rules of Civil Procedure or certified mail, return receipt requested.

33.6(3) *Contents.* The statement of charges and notice of hearing will contain the following information:

- a. A statement by the board showing that there is probable cause to file the statement of charges;
- b. A statement of the time, place, and nature of the hearing;
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- d. A reference to the particular sections of the statutes and rules involved;
- e. A short and plain statement of the matters asserted containing sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

- f.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties' counsel where known;
- g.* Reference to the procedural rules governing conduct of the contested case proceeding;
- h.* Reference to the procedural rules governing informal settlement;
- i.* Identification of the presiding officer as the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code sections 272C.6(1) and (2); and
- j.* A statement requiring the respondent to submit an answer pursuant to subrule 33.13(2) within 20 days after service of the statement of charges.

641—33.7(17A) Requests for contested case proceeding. Any person seeking or claiming entitlement to a contested case hearing shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

33.7(1) Contents of request. The request for a contested case proceeding should:

- a.* State the name and address of the requester;
- b.* Identify the specific board action that is disputed;
- c.* Describe issues of material fact in dispute; and
- d.* Where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved.

33.7(2) Board action on request. If the board grants the request, the board will issue a notice of hearing. If the board denies the request, the board will issue a written order specifying the basis for the denial.

641—33.8(105) Legal representation. Following the filing of a statement of charges and notice of hearing, the office of the attorney general is responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board will not represent the board in that case but will represent the public interest. Other parties to a proceeding before the board may have counsel at their own expense.

641—33.9(17A,105,272C) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case will be the board, a panel of not less than three board members who are licensed under Iowa Code chapter 105, or a panel of nonboard member specialists as provided in Iowa Code sections 272C.6(1) and (2). The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, including ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberation, or drafting the written decision for review by the board or board panel. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 641—33.29(17A).

641—33.10(17A) Presiding officer in a nondisciplinary contested case.

33.10(1) A nondisciplinary contested case includes license denial proceedings. Any party in a nondisciplinary contested case may request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing by filing a written request within 20 days after service of a notice of hearing identifying or describing the presiding officer as the board.

33.10(2) The board may only deny the request if:

- a.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- b.* An administrative law judge with the qualifications identified in subrule 33.10(4) is unavailable to hear the case within a reasonable time.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is not likely to be dispositive in resolving the disputed factual issues.

e. The request was not timely filed.

f. The request is not consistent with a specified statute.

33.10(3) The board will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 33.10(4), the parties will be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

33.10(4) Except as otherwise provided by a provision or law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of the hearing, whichever occurs first.

33.10(5) Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon appeal, the board possesses the powers and complies with the provisions of this chapter applicable to presiding officers.

641—33.11(17A) Disqualification.

33.11(1) A presiding officer or other person will withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted, or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, 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;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship who:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation.

33.11(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information that is relayed to assigned investigators;

c. Review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case.

33.11(3) Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case will be disclosed if required by Iowa Code section 17A.17(3) and subrule 33.27(9).

33.11(4) By electing to participate in an appearance before the board pursuant to rule 641—34.7(17A), the licensee waives any objection to a board member’s participating as a decision

maker in a contested case proceeding on the grounds that the board member “personally investigated” the matter under this provision.

33.11(5) If a presiding officer or other person knows of information that might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person will submit the relevant information from the records by affidavit including a statement of the reasons for the determination that withdrawal is unnecessary.

641—33.12(17A) Consolidation—severance.

33.12(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested cases where:

- a. The matters involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

33.12(2) Severance. The presiding officer may, for good cause shown, order any contested case proceeding or portions thereof severed.

641—33.13(17A) Pleadings.

33.13(1) Pleadings. Pleadings may be required by rule, by the statement of charges, or by order of the presiding officer.

33.13(2) Answer.

a. An answer shall be filed within 20 days of service of the statement of charges and notice of hearing that:

- (1) Identifies on whose behalf it is filed;
- (2) Sets forth the name, address and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney, if any, representing that person;
- (3) Specifically admits, denies or otherwise answers all material allegations of the statement of charges; and
- (4) Sets forth any facts deemed necessary to show an affirmative defense and contain as many additional defenses as the respondent may claim.

b. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

33.13(3) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Otherwise, a party may amend a pleading only with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

641—33.14(17A) Service and filing.

33.14(1) Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with its filing. Except for the original statement of charges and notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

33.14(2) Service—how made. Service upon a party represented by an attorney will be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person’s last-known address. Service by mail is completed upon mailing, except where otherwise specifically provided by statute, rule, or order.

33.14(3) Filing—when required. After the statement of charges and notice of hearing, all documents in a contested case proceeding will be filed with the board. All documents that are required to be served upon a party will be filed simultaneously with the board.

33.14(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery to the board; or mailed by first-class or state interoffice mail to the board, so long as there is proof of mailing.

33.14(5) Proof of mailing. Proof of mailing includes:

- a. A legible United States Postal Service postmark on the envelope, or
- b. A certificate of service, or
- c. A notarized affidavit, or
- d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the board and to the names and addresses of the parties listed below by depositing the same in (a United States Post Office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

641—33.15(17A) Discovery.

33.15(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules, by order of the presiding officer, or by agreement of the parties, time periods for compliance with discovery will be as provided in the Iowa Rules of Civil Procedure.

33.15(2) Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery will be ruled upon by the presiding officer. Opposing parties will be afforded the opportunity to respond within 10 days of the filing of the motion unless the time is shortened as provided in subrule 33.15(1). The presiding officer may rule on the basis of the written motion and any response, or may order oral argument.

33.15(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

641—33.16(17A,272C) Subpoenas in a contested case.

33.16(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, or other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas will be issued by the executive officer or designee upon written request. In the case of a request for a subpoena of mental health records, the request must confirm the conditions described in 641—subrule 34.5(1) prior to the issuance of the subpoena.

33.16(2) A request for a subpoena should include the following information, as applicable, unless the subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address, and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records, or other real evidence requested;
- f. The date, time, and location for production, or inspection and copying; and
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in 641—subrule 34.5(1) have been satisfied.

33.16(3) Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address, and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records, or other real evidence the person is commanded to produce;

- g.* The date, time, and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address, and telephone number of the board executive officer or designee;
- j.* The date of issuance; and
- k.* A return of service.

33.16(4) Unless a subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes, the executive officer or designee will mail the subpoena to the requesting party, with a copy to the opposing party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

33.16(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case, who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena describing the legal reasons why the subpoena should be quashed or modified. It may be accompanied by legal briefs or factual affidavits.

33.16(6) Upon receipt of a timely motion to quash or modify a subpoena, the presiding officer hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the presiding officer. The presiding officer may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

33.16(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision.

33.16(8) If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

641—33.17(17A) Motions.

33.17(1) Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

33.17(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on the motion.

33.17(3) The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 641—33.29(17A).

33.17(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of the hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

33.17(5) Motions for summary judgment shall comply with Iowa Rule of Civil Procedure 1.981 and will be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

a. Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served.

b. The time fixed for hearing or nonoral submission will be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer.

c. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 641—33.32(17A,272C) and appeal pursuant to rule 641—33.30(17A,272C).

641—33.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal is with prejudice.

641—33.19(17A) Intervention.

33.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

33.19(2) When filed. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor will be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the proceeding will ordinarily be denied.

33.19(3) Grounds for intervention. The movant shall demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and
- c. The interests of the movant are not adequately represented by existing parties.

33.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may limit the issues raised by the intervenor or otherwise condition the intervenor's participation.

641—33.20(17A) Telephone proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

641—33.21(17A) Prehearing conferences.

33.21(1) Any party may request a prehearing conference. Prehearing conferences will be conducted by the executive officer or designee, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference will be scheduled not less than five business days prior to the hearing date. The executive officer shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference will be given by the executive officer to all parties. For good cause the executive officer may permit variances from this rule.

33.21(2) The parties at a prehearing conference will be prepared to discuss the following subjects, and the executive officer or administrative law judge may issue appropriate orders concerning:

- a. The possibility of settlement.
- b. The entry of a scheduling order to include deadlines for completion of discovery.

- c.* Stipulations of law or fact.
 - d.* Stipulations on the admissibility of evidence.
 - e.* Submission of expert or other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive officer or administrative law judge at the prehearing conference. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.
 - f.* Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.
 - g.* Stipulations for waiver of any provision of law.
 - h.* Identification of matters that the parties intend to request to be officially noticed.
 - i.* Consideration of any additional matters that will expedite the hearing.
- 33.21(3)** Prehearing conferences may be conducted by telephone unless otherwise ordered.

641—33.22(17A) Continuances.

33.22(1) Unless otherwise provided, applications for continuance shall be filed with the board at least seven days before the date scheduled for hearing. If the application for continuance is not contested, the executive officer or designee will issue the appropriate order. If the application for continuance is contested, the matter will be heard by the board or delegated to an administrative law judge.

33.22(2) A written application for continuance will:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b.* State the specific reasons for the request for continuance; and
- c.* Be signed by the requesting party or the party's representative.

33.22(3) An oral application for continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer.

33.22(4) No application for continuance will be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

33.22(5) The presiding officer may require documentation of any grounds for continuance. In determining whether to grant a continuance, the presiding officer may consider any relevant factors, including prior continuances; the interests of all parties; the public interest; the likelihood of informal settlement; the existence of an emergency; any objection; any applicable time requirements; the existence of a conflict in the schedules of counsel, parties, or witnesses; and the timeliness of the request.

641—33.23(272C) Settlement agreements.

33.23(1) Settlement negotiations after the notice of hearing may be initiated by the licensee or other respondent, the prosecuting attorney, the board's executive officer, or the board chair or chair's designee.

33.23(2) The board chair or chair's designee may negotiate on behalf of the board but does not have the authority to bind the board to a particular term of settlement.

33.23(3) The respondent is not obligated to participate in settlement negotiations. The respondent's initiation or consent to settlement negotiations constitutes a waiver of notice and opportunity to be heard during the settlement negotiation pursuant to Iowa Code section 17A.17 and rule 641—33.27(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair's designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

33.23(4) Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal

settlement will be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of the settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement, which the respondent is free to accept or reject.

33.23(5) If the board and respondent agree to a consent order, the consent order constitutes the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and attendant rights. A consent order in a licensee disciplinary case has the force and effect of a final disciplinary order entered in a contested case and may be published as provided in subrule 33.30(1).

641—33.24(17A) Hearing procedures. The presiding officer will be in control of the proceedings and will have the authority to administer oaths, admit or exclude testimony or other evidence, and rule on all motions and objections.

33.24(1) Examination of witnesses. All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

33.24(2) Public hearing. The hearing will be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public.

33.24(3) Record of proceedings. Oral proceedings will be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof will be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription will be filed with and maintained by the board for at least five years from the date of decision.

33.24(4) Order of proceedings. Before testimony is presented, the record will show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings will generally be conducted in the following order, subject to modification at the discretion of the board:

a. The presiding officer or designee may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state's interest before the board may make a brief opening statement, which may include a summary of charges and the names of any witnesses and documents to support such charges.

c. Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. The presentation of evidence on behalf of the respondent(s).

f. Rebuttal evidence on behalf of the state, if any.

g. Rebuttal evidence on behalf of the respondent(s), if any.

h. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any. The order of proceedings will be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 641—33.40(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 641—33.36(17A,105,272C).

33.24(5) Decorum. The presiding officer will maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

33.24(6) Immunity. The presiding officer has authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

33.24(7) Sequestering witnesses. The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

641—33.25(17A) Evidence.

33.25(1) The presiding officer will rule on the admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

33.25(2) Stipulation of facts is encouraged.

33.25(3) Evidence in the proceeding will be confined to the issues as to which the parties received notice prior to the hearing unless a party waives the party's right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer admits evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

33.25(4) The party seeking admission of an exhibit must provide the opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. All exhibits admitted into evidence will be appropriately marked and be made part of the record.

33.25(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and will be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling will 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.

33.25(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record by briefly summarizing the testimony or, with permission of the presiding officer, presenting the testimony. If the excluded evidence consists of a document or exhibit, it will be marked as part of an offer of proof and inserted in the record.

33.25(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to relying for the conduct of their serious affairs, and may be based on hearsay or other types of evidence that may or would be inadmissible in a jury trial.

641—33.26(17A) Default.

33.26(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

33.26(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

33.26(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 33.30(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

33.26(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

33.26(5) Properly substantiated and timely filed motions to vacate will be granted only for good cause shown, with burden of proof as to good cause on the moving party. Adverse parties will have ten days to respond to a motion to vacate. Adverse parties will be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

33.26(6) "Good cause" for purposes of this rule has the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

33.26(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 641—33.29(17A).

33.26(8) If a motion to vacate is granted and no interlocutory appeal has been taken, the presiding officer will issue another statement of charges and notice of hearing and the contested case will proceed accordingly.

33.26(9) A default decision may provide either that the default is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 641—33.33(17A).

641—33.27(17A) Ex parte communication.

33.27(1) Unless requested for the disposition of ex parte matters specifically authorized by statute, following issuance of the statement of charges and notice of hearing there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 33.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

33.27(2) Prohibitions on ex parte communications commence with the issuance of the statement of charges and notice of hearing in a contested case and continue for as long as the case is pending before the board.

33.27(3) Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

33.27(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications will be provided in compliance with rule 641—33.14(17A) and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. When permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

33.27(5) Persons who jointly act as a presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

33.27(6) The executive officer or other persons may be present during deliberations as long as the executive officer or other person is not disqualified from participating pursuant to rule 641—33.11(17A).

33.27(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 641—33.22(17A).

33.27(8) A presiding officer who receives a prohibited ex parte communication during the contested case process must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order.

b. If the presiding officer determines that disqualification is not warranted, such documents will be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

33.27(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

33.27(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communications prohibitions by board personnel will be reported to the board and the board's executive officer for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

641—33.28(17A) Recording costs. Upon request, the board will provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record will be paid by the requesting party.

641—33.29(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive officer, administrative law judge, or hearing panel. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of the hearing, whichever is first. In determining whether to do so, the board will consider:

1. The extent to which granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

641—33.30(17A,272C) Decisions.

33.30(1) Final decisions. When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision. A majority of the members constitutes a quorum. Final decisions will be served on the parties in accordance with subrule 33.14(2). Final decisions of the board, including consent agreements and consent orders, are public documents pursuant to Iowa Code chapter 22.

33.30(2) Proposed panel decisions.

a. Panel of specialists. When a panel of three specialists presides over the hearing, the panel will issue a proposed decision that will include findings of fact but will not include conclusions of law or any recommendation for or against the licensee discipline. A proposed decision of a panel of specialists, together with a transcript of the proceedings and the exhibits presented, will be reviewed by the board within 30 days of the date the proposed decision was issued.

b. Panel of board members. When a panel of three or more board members presides over the hearing, the panel will issue a proposed decision that will include proposed findings of fact, conclusions of law, and the order. A proposed panel decision will be reviewed by the board within 30 days of the date the proposed panel decision was issued. A proposed panel decision becomes a final decision without further proceedings unless appealed in accordance with paragraph 33.30(2) "c."

c. Appeal of proposed panel decisions. A proposed panel decision pursuant to paragraph 33.30(2)“a” or paragraph 33.30(2)“b” may be appealed to the full board by either party by serving on the executive officer, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party. The notice of appeal shall specify the party initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

(1) Following receipt of a notice of appeal, the board will enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail. Briefs will cite any applicable legal authority and specify relevant portions of the record in that proceeding.

(2) Oral argument will be heard by the board unless waived by both parties. The time granted each party for oral argument will be established by the board.

(3) The record on appeal will be the entire record made before the hearing panel or administrative law judge.

d. Confidentiality. At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

e. Requests to present additional evidence. A party may request the taking of additional evidence after the issuance of a proposed decision only by establishing that:

- (1) The evidence is material; and
- (2) The evidence arose after the completion of the original hearing; or
- (3) Good cause exists for failure to present the evidence at the original hearing; and
- (4) The party has not waived the right to present additional evidence.

A written request to present additional evidence must be filed with the notice of appeal or by a nonappealing party within 14 days of service of the notice of appeal. The board may remand a case to the hearing panel for further hearing or may itself preside at the taking of additional evidence.

641—33.31(17A,272C) Client notification. Within 15 days (or such other time period specifically ordered by the board) of the licensee’s receipt of the board’s final decision, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board’s final order, the licensee shall file with the board copies of the notices sent. Compliance with this requirement is a condition for an application for reinstatement.

641—33.32(17A,272C) Application for rehearing.

33.32(1) Any party to a contested case proceeding may file an application for rehearing from a final order. The filing of an application for rehearing is not necessary to exhaust administrative remedies for purposes of judicial review.

33.32(2) The application for rehearing will state on whose behalf it is filed, the specific grounds for rehearing, the relief sought, whether the applicant desires reconsideration of all or part of the board decision on the existing record, and whether, on the basis of grounds enumerated in paragraph 33.30(2)“e” and rule 641—33.31(17A,272C), the applicant requests an opportunity to submit additional evidence.

33.32(3) The application shall be filed with the board within 20 days after issuance of the final decision.

33.32(4) A copy of the application shall be timely mailed by the applicant to all parties of record.

33.32(5) A request that additional evidence be considered on rehearing is governed by paragraph 33.30(2)“e.”

33.32(6) Any application for rehearing is deemed denied unless the board grants the application within 20 days after its filing.

33.32(7) Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

33.32(8) If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

641—33.33(17A) Stays of board actions.

33.33(1) Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

33.33(2) In determining whether to grant a stay, the presiding officer or board will consider the factors listed in Iowa Code section 17A.19(5) “c.”

33.33(3) A stay may be vacated by the issuing authority upon application of the board or any other party.

641—33.34(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

641—33.35(17A) Emergency adjudicative proceedings.

33.35(1) *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 board 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 board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board will consider factors including, but not limited to, the following:

- a.* Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b.* Whether the specific circumstances which pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;
- c.* Whether the person 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;
- d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e.* Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

33.35(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger and the board’s decision to take immediate action. The order is an open record.

b. The written emergency adjudicative order will be immediately delivered to the person who is required to comply with the order, by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the board;
- (3) Certified mail to the last address on file with the board;
- (4) Facsimile, which may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by facsimile and has provided a facsimile number for that purpose.

c. To the degree practicable, the board will select the procedure for providing written notice that best ensures prompt, reliable delivery.

33.35(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order is issued, the board will make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

33.35(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

a. Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for hearing.

b. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon written application unless the person required to comply with the order is the party requesting the continuance.

641—33.36(17A,105,272C) License denial. If the board denies an application for a license, the board or its staff shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 641—33.37(17A,105,272C) shall apply.

33.36(1) An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board shall promptly issue a notice of hearing on the grounds asserted by the applicant.

33.36(2) Subject to subrule 33.10(1), the board may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as the presiding officer and render a proposed decision. A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to subrule 33.30(2).

33.36(3) License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

33.36(4) The presiding officer, after a hearing on the license denial, may grant or deny the application for licensure. If denied, the presiding officer shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

33.36(5) The notice of license denial, request for hearing, notice of hearing, record at hearing, and order are open records and available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations, and other persons or entities.

33.36(6) Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19 that are applicable to judicial review of any agency's final decision in a contested case.

641—33.37(17A,105,272C) Denial of application to renew license. If the board denies a timely and sufficient application to renew a license, a notice of hearing will be issued to commence a contested case proceeding.

33.37(1) Hearings on denial of an application to renew a license will be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 33.36(2) and 33.36(4) to 33.36(6) will generally apply, although license denial hearings that are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

33.37(2) Pursuant to Iowa Code section 17A.18(2), an existing license does not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

33.37(3) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application is:

- a.* Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;
- b.* Signed by the licensee if the application is submitted in paper form or certified as accurate if submitted electronically;
- c.* Fully completed; and
- d.* Accompanied with the required fee. The fee will be deemed unacceptable if the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

33.37(4) The administrative processing of an application to renew an existing license will not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

641—33.38(105,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment shall be made directly to the board.

33.38(1) The board may assess the following costs under this rule:

- a.* For conducting a disciplinary hearing, an amount not to exceed \$75.
- b.* All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable under the circumstances.
- c.* All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs include, but are not limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses are guided by Iowa Code section 622.69. The cost for expert witnesses is guided by Iowa Code section 622.72. Mileage costs are not guided by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.
- d.* All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the service of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary

hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

33.38(2) When imposed at the board's discretion, hearing fees (not exceeding \$75) will be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule will be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board will have until the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditures. In order for the board to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

33.38(3) Any party may object to the fees, costs, or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within 10 days of any subsequent order establishing the amount of the assessment. A party's failure to timely object is deemed a failure to exhaust administrative remedies. Orders imposing fees, costs, or expenses will notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

33.38(4) Fees, costs, and expenses assessed by the board pursuant to this rule are allocated to the expenditure category in which the disciplinary procedure or hearing was incurred. The fees, costs, and expenses are considered repayment of receipts as defined in Iowa Code section 8.2.

33.38(5) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board constitutes a violation of an order of the board, is grounds for discipline, and is considered prima facie evidence of a violation of Iowa Code section 272C.3(2) "a." However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

641—33.39(17A) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

641—33.40(17A,272C) Reinstatement.

33.40(1) The term "reinstatement," as used in this rule, includes both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license.

33.40(2) Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender, unless the order of revocation provides that the license is permanently revoked.

33.40(3) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement cannot be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

33.40(4) All proceedings for reinstatement will be initiated by the respondent, who will file with the board an application for reinstatement of the respondent's license. Such application will be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement will be subject to the same rules of procedure as other cases before the board.

33.40(5) An application for reinstatement will allege facts which, if established, are sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be

reinstated. Compliance with rule 641—33.31(17A,272C) must also be established. The burden of proof to establish such facts is on the respondent.

33.40(6) An order of reinstatement will incorporate findings of fact and conclusions of law and be based upon the affirmative vote of no fewer than a majority of the board. This order will be published as provided for in subrule 33.30(1).

These rules are intended to implement Iowa Code chapters 17A, 105 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 34
“Plumbing and Mechanical Systems Board—Complaints and Investigations”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4 and 272C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 105 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 34 and implements Iowa Code chapters 105 and 272C in accordance with the goals of Executive Order 10 (Jan. 10, 2023). The intended benefit of this chapter is to ensure that the public and licensees are aware of the complaint and investigation process and understand their rights and responsibilities during this process. It provides information regarding the processes for submitting a complaint; requires licensees to report malpractice, disciplinary actions, or regulatory infractions of other licensees; and describes the investigative process, including the issuance of investigatory subpoenas, peer review committees, and Plumbing and Mechanical Systems Board appearances.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the public. There is a cost to licensees in the form of licensing application and renewal fees (as described in other chapters), which in turn gives the Board the ability to hire staff that investigate cases. The licensee could also have costs related to responding to an investigatory subpoena or if the licensee retains counsel to represent the licensee during the investigative process.

Costs to the Department are the staff time needed to manage Board activities, including complaints and investigations. The time needed to manage this provision is generally in the form of written and verbal correspondence with licensees, complainants and other pertinent parties, issuing subpoenas, gathering records, conducting interviews as needed, and authoring investigative reports. There is 1 full-time equivalent (FTE) position assigned to investigate complaints, with support from executive

officers. Staff salaries to support the work of the Board are covered by the fees authorized by Iowa Code section 105.9.

- Classes of persons that will benefit from the proposed rulemaking:

The public and licensees benefit from the proposed rulemaking. The proposed rules ensure licensees have knowledge of the complaint and investigative process. This ensures licensees understand their responsibilities and rights surrounding complaints and investigations. The investigative process also benefits the Board because it permits the Board to gather needed information to determine if a violation of a Board rule did occur. In turn, the public is benefited as the investigatory process is the primary mechanism the boards have to ensure public safety and welfare.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Complaints are processed and investigated by Board staff. The boards ultimately determine whether a Board rule has been violated and whether discipline should be initiated against the licensee. While the licensee does not have a direct cost associated with complaints/investigations, the licensee may incur costs in responding to the investigative process. There are 11,629 licensed individuals and 2,035 licensed businesses. In 2022, the Board received 68 complaints that resulted in 97 investigations. The Board issued 66 disciplinary actions, including 59 for unlicensed work.

- Qualitative description of impact:

These rules are necessary to implement the overall program goals identified in Iowa Code chapter 105. The purpose of complaints and investigations is to address allegations against licensees, enable the Board to make informed decisions, and protect the public from unscrupulous practice. Eliminating complaints and investigations would allow acts detrimental to the public to go unchecked and would ultimately be harmful to the public. The process proposed by this rulemaking works to allow staff to obtain necessary information and for the Board to evaluate the extent to which a complaint does or does not violate Board rules. This process is fairly similar across the country for regulated professions.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency specific to this chapter are the staff time needed to manage Board activities, including complaints and investigations. The time needed to manage this provision is generally in the form of written and verbal correspondence with licensees, complainants and other pertinent parties, issuing subpoenas, gathering records, conducting interviews as needed, and authoring investigative reports. There is 1.0 FTE position assigned to investigate complaints, with support from executive officers. Staff salaries to support the work of the Board are covered by the fees authorized by Iowa Code section 105.9.

Costs to the agency in implementing Iowa Code chapter 105 as a whole include the support staff for processing licenses and continuing education units (CEUs), an investigator, and supervisor. It also includes IT/AMANDA support staff and other office costs, the database used to store licensee information and issue licenses, and indirect costs. This specifically includes 3.6 FTE positions at a cost of approximately \$322,254 in FY 2023. It includes a Computer Aid, Inc., vendor at \$50,000 in FY 2023. It includes expenses associated with licensing software and technology at a cost of approximately \$625,000 in FY 2023. Indirect costs in FY 2023 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as division administrator, legal, and fiscal support.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues. Notably, complaints and investigations could result in disciplinary action that may have an effect on state revenues (see 641—Chapter 32).

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes that the benefits achieved justify the costs. The purpose of investigations and complaints are to address allegations against licensees, enabling the Board to make informed decisions regarding that licensee. Eliminating complaints and investigations would cause harm to the public allowing licensees' negative actions to go unchecked.

Furthermore, the proposed rules add very little cost beyond any costs incurred due to the substantive requirements of Iowa Code chapter 105. The cost of licensing is relatively small when compared to the benefit of having a properly trained and supervised workforce in this industry. When using properly licensed businesses and individuals, the public can have confidence that this important work is done safely and correctly. There are bonding and insurance requirements in cases where work is not done properly, the costs of which are statutorily required to be borne by the licensees. The bonding and insurance requirements protect the public from economic harm resulting from incomplete work and incentivizes licensees to complete work using ethical business practices.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board's investigative process is largely dictated by statute in Iowa Code chapter 272C. This rulemaking sets forth the mechanisms to implement Iowa Code chapter 272C as required. The majority of the time and costs to implement this rulemaking come from the resources to investigate and the Board's time to review and deliberate on the investigative findings. The Board does utilize cost-effective measures to reduce costs such as letter correspondence when available instead of conducting in-person interviews.

The realignment created by 2023 Iowa Acts, Senate File 514, brought over 20 boards together within DIAL, and DIAL is continuing to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards.

The Board's ultimate goal is ensuring public safety and welfare. The purpose of this rulemaking is to allow a method for the public to bring complaints against licensed professionals and allow the boards to investigate complaints. The Board needs the ability to investigate complaints, gather information and make informed decisions on whether a rule has been violated. Without this process, acts detrimental to the public will go unchecked and ultimately harm the public.

Statewide licensing is required by Iowa Code chapter 105 and broadly protects all of the citizens of Iowa and treats the entire industry with uniformity. The Board is statutorily required to adopt rules to implement Iowa Code chapter 105, and the rules proposed herein are believed to be the least restrictive implementation of Iowa Code chapter 105.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

See response to section 5.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

See response to section 5.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. While some licensees could be running a small business, some also work for large businesses. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business to comply with this rule.

The impact on small business is already believed to be at the lowest level available in order to implement and carry out the duties of the agency in Iowa Code chapter 105. One of the positions on the Board is specific to a contractor primarily working in rural Iowa, which is likely to be a small business. If a small business subject to this chapter identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 34 and adopt the following new chapter in lieu thereof:

CHAPTER 34

PLUMBING AND MECHANICAL SYSTEMS BOARD—COMPLAINTS AND INVESTIGATIONS

641—34.1(272C) Complaints.

34.1(1) Complaints can be submitted online, in writing, or verbally and should include the name and contact information of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated by the board.

34.1(2) A person is not civilly liable for filing a complaint in good faith with the board, or for cooperating with a board investigation per Iowa Code section 272C.8.

641—34.2(272C) Report of malpractice claims or actions or disciplinary actions. The licensee will submit any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

641—34.3(272C) Report of acts or omissions. A licensee having knowledge of rules violations committed by another licensee will file a report to the board. The report will include the name and contact information of the licensee and the date, time, and place of the incident.

641—34.4(272C) Investigation of complaints or reports. Board staff may request additional information, solicit a response from the licensee, subpoena records, conduct interviews, gather evidence, and perform other investigatory duties as necessary to inform the board.

641—34.5(17A,272C) Issuance of investigatory subpoenas.

34.5(1) The board executive officer or designee may, upon the written request of a board investigator or on the executive officer's own initiative, subpoena books, papers, records, and other real evidence which are necessary for the board to decide whether to initiate a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

34.5(2) Each subpoena will contain:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production or inspection and copying;

d. The deadline for filing a motion to quash or modify the subpoena;

e. The signature, address and telephone number of the board executive officer or designee;

f. The date of issuance;

g. A return of service.

34.5(3) A person can challenge the subpoena by filing a motion to quash describing the legal justification for the motion within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days.

34.5(4) Upon receipt of a timely motion to quash or modify a subpoena, an administrative law judge will issue a decision. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

34.5(5) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving the board executive officer, either in person, by email, or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

34.5(6) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

641—34.6(272C) Peer review.

34.6(1) A complaint may be assigned to a peer reviewer for review and report to the board.

34.6(2) The board determines what complaints or other matters are referred to a peer reviewer.

34.6(3) Peer reviewers are not liable for acts, omissions, or decisions made in connection with service made in good faith.

34.6(4) The peer reviewer shall maintain confidentiality pursuant to Iowa Code section 272C.6.

641—34.7(17A) Appearance. The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the committee appearance, the licensee further waives any objection to the board executive officer assisting the board in the contested case proceeding.

These rules are intended to implement Iowa Code chapters 17A, 105, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 35
“Plumbing and Mechanical Systems Board—Alternative Licensure Pathways”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 105.4(2) and 272C.3
State or federal law(s) implemented by the rulemaking: Iowa Code sections 105.4(2), 272C.12 and 272C.13

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 35 and implements Iowa Code chapters 105 and 272C in accordance with the goals of Executive Order 10 (Jan. 10, 2023). This rulemaking establishes procedures for the Board to issue licenses by alternative methods. The rulemaking sets forth a checklist for applicants to follow when seeking a reciprocal license and the circumstances under which the Board may deny a reciprocal license. The rulemaking also sets forth a checklist for applicants to follow when seeking license by verification and explains how the Board will approach applications for applicants with prior discipline. The rulemaking sets forth a checklist for applicants to follow when seeking licensure via work experience upon an applicant’s relocation from another jurisdiction that did not require a license.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no known costs to the general public. There are costs to the industry related to licensees obtaining and maintaining their licenses. There are costs to the agency for staff to administer the program. This includes processing staff, an investigator, and a supervisor/board executive. There are also costs associated with the database that houses all of data related to licensure.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees benefit from this rulemaking because it provides an alternative path for those licensees that already have a license in another state. The licensees that qualify for license by verification, reciprocity or work experience are able to apply for an Iowa license without going through all of the steps of the

initial licensing process. This saves the licensee time and expense. The public benefits by having more licensed individuals and businesses in the workforce.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Department does not have an exact number of licensees that have been licensed by alternative methods versus the standard application process as the database does not differentiate between traditional licensing and alternative pathways. Licensees from other states do utilize this rule to apply for licensing when relocating to Iowa.

The costs for the individual licensees are those incurred in the course of obtaining and maintaining their licenses. The costs for contractor licensees are those incurred in the course of obtaining and maintaining proper bonding and insurance. The costs to licensees include the license fees, which are described in 641—Chapter 28. There are also costs associated with continuing education courses or apprenticeship programs. Those costs vary depending on the type and number of licenses an individual has to maintain. Estimated continuing education unit (CEU) costs are described in the analysis for 641—Chapter 30.

- Qualitative description of impact:

In order to regulate and license the professions as directed in statute, base standards for licensure are critical to protect public safety. This rulemaking allows for individuals with licenses in other states to apply for licensure in Iowa through a streamlined verification process, reciprocity or work experience. This process allows for quicker licensing and also allows more professionals available to the public to meet critical needs.

These rules are necessary to implement the overall program goals identified in Iowa Code chapter 105. The public is protected by having an appropriately qualified and trained workforce in the industry. There are multiple examples of unqualified and unlicensed individuals that have created hazardous situations due to improper installation or repair of plumbing and mechanical systems. If licensed companies have issues, there are licensing and bond requirements intended to also protect the public.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to process license applications. Costs to the agency in implementing Iowa Code chapter 105 overall include the support staff for processing licenses and CEUs, an investigator, and supervisor. It also includes IT/AMANDA support staff and other office costs, the database used to store licensee information and issue licenses, and indirect costs. This specifically includes 3.6 full-time equivalent (FTE) positions at a cost of approximately \$322,254 in FY 2023. It includes a Computer Aid, Inc., vendor at \$50,000 in FY 2023. It includes expenses associated with licensing software and technology at a cost of approximately \$625,000 in FY 2023. Indirect costs in FY 2023 were \$112,789. These indirect costs include overall agency expenses not specific to this program, such as division administrator, legal, and fiscal support.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues from this particular chapter.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because the costs are minimal, they are justified by the benefit of clarity to applicants looking to relocate to Iowa. This chapter does not impose any significant regulatory burdens. It merely clarifies the path applicants follow to obtain an Iowa license in the applicable trades under Iowa Code chapter 105. The Plumbing and Mechanical Systems Board does not incur many additional costs outside of the Department's general administrative cost to operate and applicants pay a fee to offset this.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to the requirements for licensure by verification as these rules already reflect a less restrictive method for applicants to complete the licensing process.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a less restrictive alternative to this rulemaking because these rules already reflect a less restrictive method for licensing. Iowa Code section 105.21 requires the Board to adopt the rules necessary to permit nonresident applicants to become licensed in Iowa where their home state has similar licensing requirements and the home state grants reciprocal rights to Iowans.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Iowa Code section 105.21 requires the Board to adopt the rules necessary to permit nonresident applicants to become licensed in Iowa where their home state has similar licensing requirements, and the home state grants the same reciprocal rights to Iowans. This rulemaking defines necessary terms and provides checklists for applicants to follow in line with the directive from the legislature. As the legislature has required that rules be written to implement this policy directive, there is no less restrictive alternative to accomplish the benefit.

Statewide licensing is required by Iowa Code chapter 105 and broadly protects all of the citizens of Iowa and treats the entire industry with uniformity. The Board is statutorily required to adopt rules to implement Iowa Code chapter 105, and the rules proposed herein are believed to be the least restrictive implementation of Iowa Code chapter 105.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The impact on small business is already believed to be at the lowest level available in order to implement and carry out the duties of the agency in Iowa Code chapter 105. One of the positions on the Board is specific to a contractor primarily working in rural Iowa, which is likely to be a small business. If a small business subject to this chapter identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 35 and adopt the following **new** chapter in lieu thereof:

CHAPTER 35
PLUMBING AND MECHANICAL SYSTEMS BOARD—ALTERNATIVE
LICENSURE PATHWAYS

641—35.1(105) Definitions. For purposes of this chapter, the following definitions apply:

“*Board*” means the same as defined in Iowa Code section 105.2(2).

“*Full time*” means a minimum of 1,700 hours of work in a one-year period.

“*Issuing jurisdiction*” means the same as defined in Iowa Code section 272C.12(5).

“*Transferring jurisdiction*” means the specific issuing jurisdiction on which an applicant relies to seek licensure in Iowa by verification under this chapter.

641—35.2(105) Reciprocity agreements. The board may enter into licensing reciprocity agreements with other states in accordance with Iowa Code section 105.21.

641—35.3(105) Licensure by reciprocity. A nonresident of Iowa seeking a reciprocal license under Iowa Code chapter 105 applies on forms provided by the board.

35.3(1) Reciprocity criteria. The board may issue a reciprocal license if the following criteria are met:

- a. The applicant is a nonresident of Iowa;
- b. The applicant possesses a valid plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic license from an issuing jurisdiction with which the board has entered into a reciprocity agreement;
- c. The applicant has paid the appropriate fee or fees set forth in 641—Chapter 28;
- d. The applicant meets the minimum qualifications for licensure set forth in rule 641—29.4(105); and
- e. The applicant agrees to comply with all provisions of Iowa law and applicable administrative rules.

35.3(2) Denial of reciprocal license. The board may refuse to issue a reciprocal license to an applicant otherwise qualified based upon a suspension, revocation, or other disciplinary action taken against the applicant by a licensing authority in this or another jurisdiction. For purposes of this subrule, a “disciplinary action” includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding.

641—35.4(105) Licensure by verification. Licensure by verification is available under the following circumstances.

35.4(1) Eligibility. A person may seek licensure by verification if the criteria in Iowa Code section 272C.12(1) are satisfied.

35.4(2) Board application. The applicant submits all of the following:

- a. A completed application for licensure by verification.
- b. Payment of the appropriate fee or fees set forth in 641—Chapter 28.
- c. A verification form completed by the transferring jurisdiction and sent directly from the transferring jurisdiction to the board, verifying that the applicant’s license, certificate, or registration in that jurisdiction complies with the conditions set forth in Iowa Code section 272C.12.
- d. Proof of residency in the state of Iowa or proof of military member’s official permanent change of station. Proof of residency may include:
 - (1) A residential mortgage, lease, or rental agreement;
 - (2) A utility bill;
 - (3) A bank statement;
 - (4) A paycheck or pay stub;
 - (5) A property tax statement;

- (6) A document issued by the federal or state government; or
- (7) Any other board-approved document that reliably confirms Iowa residency.
 - e. Proof of passing the applicable Iowa licensing examination.
 - f. Documentation of the applicant's complete criminal record in accordance with 641—paragraph 29.5(4) "c," including the applicant's personal statement regarding whether each offense directly relates to the practice of the profession.
 - g. Copies of any relevant disciplinary documents, if another issuing jurisdiction has taken disciplinary action against the applicant.

35.4(3) *Applicants with prior discipline.* If another issuing jurisdiction has taken disciplinary action against an applicant or if the applicant has a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will proceed according to Iowa Code section 272C.12(1) "f" and "g." A person whose license was revoked, or a person who voluntarily surrendered a license, in another issuing jurisdiction is ineligible for licensure by verification.

35.4(4) *Temporary licenses.* Applicants who satisfy all conditions for a license by verification under this rule, except for passing the applicable Iowa licensing examination, may be issued a temporary license in accordance with Iowa Code section 272C.12(3) "c." If the temporary license expires, the applicant may not practice until he or she submits proof of passing the applicable Iowa licensing examination.

641—35.5(105) Licensure by work experience in jurisdictions without licensure requirements.

35.5(1) *Work experience.*

a. An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a license to practice the profession may be eligible for an Iowa license if the person meets the conditions set forth in Iowa Code section 272C.13 and all other licensing criteria, including passing any necessary examinations. For each application submitted under this rule, the board will determine whether the applicant's prior work experience was substantially similar to the applicable apprenticeship training that is required for individuals licensed under 641—Chapter 29.

b. If the board determines an applicant's prior work experience was not substantially similar to the scope of practice in Iowa, the applicant may submit a subsequent application for licensure by work experience if all of the following criteria are satisfied:

- (1) The applicant enrolls in an apprenticeship program approved by the United States Department of Labor;
- (2) The applicant obtains a board-issued apprentice license; and
- (3) The applicant successfully completes one year in the apprenticeship program.

35.5(2) *Necessary documentation.* An applicant seeking to substitute work experience in lieu of satisfying applicable education or training criteria bears the burden of providing all of the following by submitting relevant documents as part of a completed license application:

- a. Proof of Iowa residency, which may include:
 - (1) A residential mortgage, lease, or rental agreement;
 - (2) A utility bill;
 - (3) A bank statement;
 - (4) A paycheck or pay stub;
 - (5) A property tax statement;
 - (6) A document issued by the federal or state government; or
 - (7) Any other board-approved document that reliably confirms Iowa residency.
- b. Proof of three or more years of full-time work experience within the four years preceding the application for Iowa licensure, which demonstrates that the work experience was substantially similar to an applicable apprenticeship program approved by the United States Department of Labor. Proof of work experience may include, but is not limited to:
 - (1) A letter from the applicant's prior employer or employers documenting the applicant's dates of employment and scope of practice;
 - (2) A paycheck or pay stub; or

(3) If the applicant was self-employed, business documents filed with the secretary of state or other applicable business registry or regulatory agency in the other jurisdiction.

c. Proof that the applicant's work experience involved a substantially similar scope of practice to the practice in Iowa, which includes:

(1) A written statement by the applicant detailing the scope of practice and stating how the work experience correlates to an applicable apprenticeship program approved by the United States Department of Labor; and

(2) Business or marketing materials detailing the services provided.

d. Proof that the other jurisdiction did not require a license to practice the profession, which may include:

(1) Copies of applicable laws;

(2) Materials from a website operated by a governmental entity in that jurisdiction; or

(3) Materials from a nationally recognized professional association applicable to the profession.

These rules are intended to implement Iowa Code sections 105.21 and 272C.12.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 46
“Minimum Requirements for Tanning Facilities”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 136D.7
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 136D; 2023 Iowa Acts,
Senate File 514; and Executive Order 10 (Jan. 10, 2023)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 46. This rulemaking implements Iowa Code section 136D.7 in accordance with the goals and directives of Executive Order 10 (Jan. 10, 2023). Iowa Code section 136D.7 requires the Department to adopt rules for the implementation and enforcement of Iowa Code chapter 136D, “including but not limited to rules relating to the operation and use of tanning devices, rules regarding the warning signs required to be posted by a tanning facility, and rules prescribing the criteria for revocation, cancellation, or suspension of a tanning facility permit.” It also requires the Department to establish and collect fees to defray the costs of administering the program established in Iowa Code chapter 136D.

The proposed rules set forth the purpose and scope of 641—Chapter 46, including the types of businesses that constitute tanning facilities, establish definitions, clarify the types of devices that are exempt from regulation as tanning devices, establish permits and fees, establish minimum requirements for the construction and operation of tanning facilities, and provide the Department’s authority to conduct inspection and set forth procedures when noncompliance is identified.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Costs associated with this chapter are incurred by tanning facilities in the course of obtaining a license and operating in compliance with 641—Chapter 46, and the Department in administering the chapter.
 - Classes of persons that will benefit from the proposed rulemaking:

Consumers who utilize tanning facilities benefit from these rules. These rules also benefit the tanning facility license holders in that they provide clear, simple, and effective health and safety guidelines for operations.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Beyond any required maintenance of the equipment, the costs to licensees of tanning facilities appear to be minimal and include providing education to operators and consumers, printing appropriate signage for the facility, and fees to support operation of the program.

The fees for those who acquire or establish a tanning facility include an application fee (\$5) and a renewal fee (\$5). Costs may be incurred for failure to pay annual permit fees (\$25/month) and for checks returned for insufficient funds (\$15). Costs are incurred for inspections (\$33 per tanning device, up to a maximum of \$330 per facility). Costs may also be incurred for failure to pay inspection costs or failure to respond to or correct violations (\$25).

Neighboring states that appear to have similar regulatory structures have similar or increased fee requirements. Wisconsin, for example, charges a \$10 annual and renewal fee and a late fee of \$35 per month. Illinois charges a \$250 initial fee and a \$250 renewal fee. Minnesota charges an annual fee of \$98 for a license, \$178 for a plan review, and \$41 for a change of ownership.

- Qualitative description of impact:

The Legislature directed the Department to establish and collect all fees necessary to administer Iowa Code chapter 136D and to promulgate rules relating to the operation and use of tanning devices and warning signs required to be posted by a tanning facility. The proposed rules establish minimum safety, sanitation, and warning criteria for the operation of tanning establishments to provide for the health and safety of the consumer. The signage requirements are clear and concise for consumers, easily implemented by the operators, and appear to be in line with national standards. Training required of operators will be able to be performed by an owner/manager of a tanning facility, and only the owner/manager is required to complete a certification.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency for implementation of the proposed rules include the costs of personnel utilized to process permits or conduct inspections, or to contract for any such work. A small portion of a currently vacant full-time equivalent (FTE) position will provide administrative support for this program. There is also a cost for the database that houses all of the information needed for tanning facility information.

- Anticipated effect on state revenues:

There are 348 active tanning facility permits. In FY 2022, tanning facility permits generated \$10,055 in revenue.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

As the Department is required by Iowa Code section 136D.7 to promulgate rules for tanning facility regulation, inaction is not possible. However, as set forth more fully in response to section 5 below, the Department believes the proposed rules are the most effective and economically efficient implementation of Iowa Code chapter 136D.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

In analyzing other states' regulatory schemes related to tanning, the Department identified that there appears to be significant variation among regulatory structures related to tanning in surrounding states. The state of Nebraska, for example, has no program to license tanning facilities, although it has several substantive requirements related to tanning facilities. Although such a regulatory structure would be

a less costly or intrusive option, Iowa Code chapter 136D precludes this type of structure in Iowa. Accordingly, the Department has maintained its current regulatory structure, but has thoroughly reviewed the substantive requirements so as to promulgate standards in what the Department believes is the most effective and economically efficient manner for the licensee. The signage requirements are clear and concise for consumers, easily implemented by the operators, and appear to be in line with national standards. Training required of operators is able to be performed by an owner/manager of a tanning facility such that only the owner/manager is required to complete a certification.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
See response to section 5 above.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See response to section 5 above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

As set forth above, the proposed rules are believed to be the less costly or less intrusive methods to achieve the purpose of this rulemaking and implement the Department's statutory duties. If a licensee subject to this chapter is a small business and has identified a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 46 and adopt the following **new** chapter in lieu thereof:

CHAPTER 46
MINIMUM REQUIREMENTS FOR TANNING FACILITIES

641—46.1(136D) Purpose and scope. This chapter provides for the permitting and regulation of tanning facilities and devices used for the purpose of tanning human skin through the application of ultraviolet radiation. This includes, but is not limited to, public and private businesses, hotels, motels, apartments, condominiums, and health and country clubs. Tanning facilities that follow these rules are not relieved from the requirements of any other federal and state regulations or local ordinances.

641—46.2(136D) Definitions. The definitions set forth in Iowa Code section 136D.2 are incorporated herein by reference.

“*Board of health*” means a county, city, or district board of health that has a 28E agreement with the department to perform inspections under this chapter.

“*Cleansing*” means to remove soil, dirt, oils or other residues from the surface of the tanning unit which may come into contact with the skin.

“*Cleansing agent*” means a substance capable of producing the effect of “cleansing.” These agents shall not adversely affect the equipment or the health of the consumer and be acceptable to the department or board of health.

“*Consumer*” means any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access.

“*Exposure position*” means any position, distance, orientation, or location relative to the radiation surfaces of a tanning device at which the user is intended to be exposed to ultraviolet radiation from the product, as recommended by the manufacturer.

“*Formal training*” means a course of instruction approved by the department for operators of tanning facilities.

“*Health care professional*” means an individual, licensed by the state of Iowa, who has received formal medical training in the use of phototherapy.

“*Inspection*” means an official examination or observation to determine compliance with statutes, rules, orders, or other applicable conditions.

“*Manufacturer’s recommendations*” means written guidelines established by a manufacturer and approved by the U.S. Food and Drug Administration for the installation and operation of the manufacturer’s equipment.

“*Operator*” means an individual designated to control operation of the tanning facility and to instruct and assist the consumer in the proper operation of the tanning devices.

“*Permit*” or “*permit to operate*” means a document issued by the department which authorizes a person to operate a tanning facility in Iowa.

“*Person*” means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but does not include federal government agencies.

“*Ultraviolet radiation*” means electromagnetic radiation with wavelengths in air between 200 and 400 nanometers.

641—46.3(136D) Exemptions. The department may, upon application or its own initiative, grant exemptions from these rules as long as it will not result in undue hazard to public health and safety. The following categories of devices are exempt from the provisions of this chapter:

46.3(1) Devices intended for purposes other than the deliberate exposure of human skin to ultraviolet radiation which produce or emit ultraviolet radiation incidental to their proper operation.

46.3(2) Tanning devices which are limited exclusively to personal use by an individual and the individual’s immediate family. Multiple ownership of the device by persons for personal use only does not qualify it for the “personal use only” exemption.

46.3(3) Phototherapy devices used by a properly trained health care professional in the treatment of disease.

641—46.4(136D) Permits and fees.

46.4(1) *Permit to operate.* No tanning facility may operate without a permit issued by the department.

46.4(2) *Application requirements for permit.* Prior to operating a tanning facility, an individual shall:
a. Apply for a permit on forms provided by the department or board of health, along with a nonrefundable application fee of \$5. A \$15 returned check fee will be charged for each check returned for insufficient funds.

b. Notify the department in writing within 30 days of any changes, additions, or deletions to the initial or renewal application as appropriate. This does not include changes involving replacement of components in tanning equipment.

46.4(3) Expiration of permit. Except as provided in 46.4(4) “*b*,” each permit expires at the end of the specified day stated therein.

46.4(4) Renewal of permit.

a. Permits will be renewed annually upon the department’s receipt of a completed renewal application and the \$5 fee.

b. If the completed renewal is submitted prior to expiration of the existing permit, the existing permit does not expire until the application has been finally determined by the department.

c. In addition to any annual fee not paid, tanning facilities incur a \$25 per month fee for failure to pay annual permit fees starting the month of expiration of the facility’s permit.

46.4(5) Transfer or termination of permit. Permits are nontransferable and must be returned to the department or board of health upon cessation of operation or change of ownership.

46.4(6) Denial, revocation, or termination of permit.

a. The department may deny, suspend, or revoke a permit for any of the following reasons:

(1) Submission of false information to the department, including in a permit application;

(2) Operation of the tanning facility in a manner that causes or threatens hazard to the public health or safety;

(3) Failure to allow authorized representatives of the department or board of health to enter the tanning facility at reasonable times for the purpose of determining compliance with the provisions of this chapter, conditions of the permit, or an order of the department or board of health;

(4) Failure to pay fees in accordance with rule 641—46.4(136D); and

(5) Violation of any of the provisions of this chapter or Iowa Code chapter 136D.

b. Except in cases where public health and safety require otherwise, prior to the institution of proceedings for suspension or revocation of a permit, the department or board of health will notify the permit holder, in writing, of the facts or conduct warranting such action and provide an opportunity for the permit holder to demonstrate or achieve compliance.

c. Any person aggrieved by a decision by the department to deny, suspend, or revoke a permit may request a contested case hearing pursuant to 481—Chapter 9.

d. After suspension or revocation, a permit may be reinstated upon payment of a \$50 fee and completion of all other requirements. This fee is in addition to any other applicable fee.

46.4(7) Inspections.

a. Inspections will be conducted annually at the cost of the permit holder. The cost of an inspection is \$33 per tanning device, up to \$330 per facility maximum. Inspection costs are due upon receipt of notice by the facility. Facilities located within a contracted area of a board of health will be paid to the contracted board of health or its designee. Inspection costs not received within 45 days of the date of billing will be assessed a \$25 per month penalty for each month or fraction thereof that payment is delinquent.

b. A penalty fee of \$25 per facility may be assessed for:

(1) Failure to respond to a notice of violation within 30 days of the date of the inspection.

(2) Failure to correct violations cited during the inspection.

c. Inspections include, but are not limited to, reviewing proper operation and maintenance of devices, necessary records and training documentation, and operator understanding and competency.

641—46.5(136D) Construction and operation of tanning facilities. The following are minimum standards for the construction, operation, and maintenance of tanning facilities:

46.5(1) Warning signs. A tanning facility shall provide and post warning signs and statements as follows:

a. The warning sign must use minimum 0.5-inch (12.7-millimeter) letters for the statement “DANGER, ULTRAVIOLET RADIATION” and 0.25-inch (6.4-millimeter) letters for other lettering;

use red lettering against a white background; be at least 9.0 inches by 12.0 inches (22.9 centimeters × 30.5 centimeters); and have the following wording:

DANGER

ULTRAVIOLET RADIATION

— Overexposure can cause

- Eye and skin injury
- Allergic reaction

— Repeated exposure may cause

- Premature aging of the skin
- Skin cancer

— Failure to wear protective eyewear may result in

- Severe burns to eyes
- Long-term injury to eyes

— Medication or cosmetics may increase your sensitivity

b. A warning sign as set forth in 46.5(1) “a” will be posted in a conspicuous location readily visible to consumers entering the facility and in a conspicuous location within one meter of the tanning device readily visible to a person preparing to use the device.

c. A tanning facility shall require each consumer to read the information in Appendices 1, 2, and 3 prior to the consumer’s initial exposure and annually thereafter. The consumer must sign a statement that the information has been read and understood. The information in Appendices 1, 2, and 3 must also be posted in each tanning room.

46.5(2) Federal certification. Only tanning devices manufactured and certified under the provisions of 21 CFR section 1040.20 may be used in tanning facilities. Compliance is based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR sections 1010.2 and 1010.3. Labeling shall be in accordance with 21 CFR section 1040.20(d).

46.5(3) Tanning device timers. Each tanning device shall have a timer that complies with 21 CFR section 1040.20(c). Each tanning device must have a method of remote timing so consumers cannot control their own exposure time. Tokens for token timers shall not be issued to any consumer in quantities greater than the device manufacturer’s maximum recommended exposure time for the consumer.

46.5(4) Temperature limits. The operator shall ensure that the facility’s interior temperature does not exceed 100 degrees F or 38 degrees C.

46.5(5) Condition of tanning devices. The tanning devices shall be maintained in good repair and comply with all state and local electrical code requirements, and include physical barriers to protect consumers from injury induced by falling against or breaking the lamps.

46.5(6) Stand-up booths. Additionally, stand-up booths shall be constructed:

a. Utilizing physical barriers (e.g., handrails) or other means (floor markings) to indicate the proper exposure distance between ultraviolet lamps and the consumer’s skin.

b. To withstand the stress of use and the impact of a falling person.

c. Utilizing rigid construction, with doors that open outwardly, and with handrails and nonslip floors.

46.5(7) Protective eyewear.

a. Eyewear shall not be reused by another consumer.

b. Protective eyewear shall meet the criteria of 21 CFR section 1040.20(c)(4).

c. Protective eyewear shall not be altered in any manner that would change its use as intended by the manufacturer (e.g., removal of straps).

d. A tanning facility operator shall verify that a consumer has protective eyewear in accordance with this subrule and not allow a consumer to use a tanning device if that consumer does not use the protective eyewear. The operator should:

(1) Ask to see the eyewear before the consumer enters the tanning room; or

(2) Provide disposable eyewear in the tanning room at all times and post a sign stating that the disposable eyewear is available and has to be worn.

e. A tanning facility operator shall instruct the consumer in the proper utilization of the protective eyewear.

46.5(8) Operation.

a. A trained operator must be present when a tanning device is operated and within hearing distance to allow the consumer to easily summon help if necessary. If the operator is not in the immediate vicinity during use, the consumer must be able to summon help through use of an audible device such as an intercom or buzzer and the operator or emergency personnel must be able to reach the consumer within a reasonable amount of time after being summoned.

b. The facility's permit will be displayed pursuant to Iowa Code section 136D.6.

c. A record of each consumer's total number of tanning visits and tanning times, exposure lengths in minutes, times and dates of the exposure, and any injuries or illness resulting from the use of a tanning device must be maintained.

d. Any tanning injury not requiring a physician's care and any resulting changes in tanning sessions shall be noted in the consumer's file. A written report of any tanning injury requiring a physician's care shall be provided to the department within five working days of its occurrence or operator's notice thereof. The report will include:

- (1) The name of the affected individual;
- (2) The name and location of the tanning facility involved;
- (3) The nature of the injury;
- (4) The name and address of the health care provider treating the affected individual, if any; and
- (5) Any other information considered relevant to the situation.

e. Defective or burned-out lamps or filters shall be replaced with a type intended for use in that device as specified on the product label on the tanning device or with lamps or filters that are "equivalent" under 21 CFR section 1040.20, and policies applicable at the time of lamp manufacture.

f. Ultraviolet lamps and bulbs that are not otherwise defective or damaged will be replaced at such frequency or after such duration of use as is recommended by the manufacturer.

g. Contact surfaces of tanning devices shall be:

- (1) Cleansed by the operator with a cleansing agent between each use;
- (2) Covered by a nonreusable protective material during each use; or
- (3) Cleansed by the consumer after use, provided the following conditions are met:
 1. The operator instructs the consumer annually on how to properly cleanse the unit;
 2. The consumer annually signs a statement that the consumer agrees to cleanse the unit after each use;
 3. Signs are posted in each tanning room reminding the consumer to cleanse the tanning unit after each use and instructing the proper way to cleanse the unit; and
 4. The operator cleanses the tanning unit at least once a day.

h. Records or documentation required by this chapter must be maintained in the tanning facility for a minimum of two years.. If maintained electronically, such records must be retrievable as a printed copy.

i. The operator shall limit a consumer's exposure to the maximum exposure frequency and session duration recommended by the manufacturer.

j. When a tanning device is being used, no other person can be allowed in the tanning device area.

k. "Unlimited" tanning packages cannot be advertised or promoted unless tanning frequency limits set by the manufacturer are included therein.

46.5(9) Training of operators.

a. All operators must satisfactorily complete a training program approved by the department prior to operating a tanning device that includes:

- (1) Education on this chapter;
- (2) Procedures for correct operation of the tanning facility and tanning devices;
- (3) The determination of skin type of consumers and appropriate duration of exposure to tanning devices;
- (4) Recognition of reaction or overexposure;

- (5) Manufacturer's procedures for operation and maintenance of tanning devices; and
- (6) Competency testing.

b. Owners and managers must complete formal training approved by the department. All owners and managers must satisfactorily pass a certification examination approved by the department before operating a tanning facility or training employees.

c. Owners and managers are responsible to train operators in the above topics and to provide review as necessary. Operators will be questioned during inspections as to the level of their understanding and competency in operating the tanning device.

d. Proof of training for owner/managers and employees must be maintained in the tanning facility and available for inspection. The employee record should be the original test signed by the employee, the date, and a statement signifying that all answers have been completed by the employee and without prior knowledge of the scoring key.

e. Operators shall be at least 16 years of age.

f. Training and testing will be completed every five years.

46.5(10) *Promotional materials.* A tanning facility shall not claim, or distribute materials claiming, that tanning devices are safe, free from risk, or that use of the device will result in medical or health benefits. The only claim that may be made is that the device is for cosmetic use only.

46.5(11) *Electronically controlled facilities.* Electronically controlled facilities are facilities that rely on electronic means to monitor consumers.

a. Entry into the facility is allowed by card only. Only one individual may enter under each card. The card is specifically activated for tanning use if the facility offers other activities and tanning will not activate if the card is not programmed for tanning. The card will not activate if two individuals are in the tanning room.

b. Police and all emergency services will have access to the facility through a key box located outside the entrance of the facility.

c. The consumer must sign a tanning agreement stating the number of minutes per session, that the consumer agrees to wear protective eyewear, that the consumer will cleanse the unit after tanning, and that the consumer is aware of the emergency access in each room.

d. The card will be programmed for the number of minutes the consumer is allowed to tan and may be reprogrammed for an increase in minutes per session only after the consumer has reviewed and re-signed the tanning agreement. The card will be deactivated after 30 consecutive days without consumer access such that the consumer will then reapply to access the tanning unit.

e. The operator will demonstrate to each consumer how to properly cleanse the unit after tanning, including the top, bottom, and handles. A sign will be placed in each room explaining the cleansing process. The operator will cleanse the units at least once per day when they are in use.

f. Free disposable eyewear will be placed in each room along with a sign stating that the disposable eyewear is available and must be worn.

g. An emergency call button or device that calls the operator or emergency personnel will be placed in each tanning room conveniently located within reach of the tanning bed.

h. During annual inspections, the inspector may ask any consumer about any of the above processes.

641—46.6(136D) Inspections, violations and injunctions.

46.6(1) *Access.* The director or an authorized agent has access to any tanning facility as authorized by Iowa Code section 136D.8.

46.6(2) *Civil penalty and enforcement.* The department may take legal action as provided in Iowa Code sections 136D.8(3) and 136D.9.

a. The department will take the following steps or use county ordinances or any other applicable ordinances, resolutions, rules or regulations when enforcement of these rules is necessary.

- (1) Cite each section of the Iowa Code or rules violated and any civil penalty imposed.
- (2) Specify the manner in which the owner or operator failed to comply.
- (3) Specify the steps required for correcting the violation.

- (4) Request a corrective action plan, including a time schedule for completion of the plan.
- (5) Set a reasonable time limit, not to exceed 30 days from the receipt of the notice, within which the permit holder must respond with the corrective action plan and, if applicable, any reasons why the civil penalty should not be imposed or to request a contested case hearing pursuant to 481—Chapter 9.
 - b.* The department will review the corrective action plan and approve it or require that it be modified.

These rules are intended to implement Iowa Code chapter 136D.

Appendix 1 POTENTIAL PHOTSENSITIZING AGENTS

1. Not all individuals who use or take these agents will experience a photosensitive reaction or the same degree of photosensitive reaction. An individual who experiences a reaction on one occasion will not necessarily experience it again or every time.
2. Names of agents should be considered only as examples. They do not represent all the names under which a product may be sold. A more complete list is available from the facility operator.
3. If you are using an agent in any of these classes, you should reduce UV exposure even if your particular medication is not listed.

Acne treatment (Retinoic acid, Retin-A) Psoralens (5-Methoxypsoralen, 8-Methoxypsoralen, 4,5,8-trimethyl-psoralen)

Antibacterials (deodorant bar soaps, antiseptics, cosmetics, halogenated carbanilides, halogenated phenols, halogenated salicylanilides, bithionol, chlorhexidine, hexachlorophene)

Antibiotics, anti-infectives (Tetracyclines)

Anticonvulsants (carbamazepine, trimethadione, promethazine)

Antidepressants (amitriptyline, Desipramine, Imipramine, Nortriptyline, Protriptyline), Tranquilizers, anti-emetics (Phenothiazines)

Antidiabetics (glucose-lowering agents) (sulfonyleureas, oral antidiabetics, hypoglycemics)

Antihistamines (diphenhydramine, promethazine, triprolidine, chlorpheniramine)

Anti-inflammatory (Piroxicam), Non-steroidal anti-inflammatory drugs (Ibuprofen, Naproxen, Piroxicam)

Antimicrobials (griseofulvin), Sulfonamides (“Sulfa drugs,” antimicrobials, anti-infectives)

Atropine-like drugs (anticholinergics, antiparkinsonism drugs, antispasmodics, synthetic muscle relaxants)

Coal tar and derivatives (Denorex, Tegrin, petroleum products used for psoriasis and chronic eczema and in shampoos)

Contraceptives, oral and estrogens (birth control pills, estrogens, progesterones)

Dyes (used in cosmetic ingredients, acridine, anthracene, eosin (lipstick), erythrosine, fluorescein, methyl violet, methylene blue, rose bengal)

Perfumes and toilet articles (musk ambrette, oil of bergamot, oil of cedar, oil of citron, oil of lavender, oil of lemon, oil of lime, oil of rosemary, oil of sandalwood)

Thiazide diuretics (“water pills”)

Appendix 2 SUN-REACTIVE SKIN TYPES USED IN CLINICAL PRACTICE

| SKIN TYPE | SKIN REACTIONS TO SOLAR RADIATION ^(a) EXAMPLES | EXAMPLES |
|-----------|--|--|
| I | Always burns easily and severely (painful burn). Tans little or none and peels. | People most often with fair skin, blue eyes, freckles. Unexposed skin is white. |
| II | Usually burns easily and severely (painful burn). Tans minimally or lightly, also peels. | People most often with fair skin; red or blonde hair; blue, hazel or even brown eyes. Unexposed skin is white. |
| III | Burns moderately and tans about average. | Normal average Caucasoid. Unexposed skin is white. |
| IV | Burns minimally, tans easily, and above average with each exposure. Exhibits IPD (immediate pigment darkening) reaction. | People with white or light brown skin, dark skin, dark brown hair, dark eyes. Unexposed skin is brown. |
| V | Rarely burns, tans easily and substantially. Always exhibits IPD reaction. | Unexposed skin is brown. |
| VI | Never burns and tans profusely; exhibits IPD reaction. | Unexposed skin is black. |

(a) Based in the first 45-60 minutes (= 2-3 minimum erythema dose) exposure of the summer sun (early June) at sea level

Appendix 3 POTENTIAL NEGATIVE HEALTH EFFECTS RELATED TO ULTRAVIOLET EXPOSURE

1. Increased risk of skin cancer later in life.
2. Increased risk of skin thickening, age spots, irregular pigmentation, and premature aging.
3. Possibility of burning or rash, especially if using any of the potential photosensitizing drugs and agents. The consumer should consult a physician before using a tanning device if using medications, if there is a history of skin problems or if the consumer is especially sensitive to sunlight.
4. Increased risk of eye damage unless proper eyewear is worn. Iowa law requires the use of proper eyewear during tanning sessions.

TANNING SYSTEMS

1. Low-pressure tanning systems use a higher percentage of UVB rays which penetrate only the upper layer of skin and can cause burning more easily than high-pressure tanning systems. Low-pressure systems require more frequent sessions to maintain a tan.

High-intensity tanning systems use more lamps and shorter tanning sessions than low-intensity tanning systems. These are still classified as low-pressure systems.

2. High-pressure tanning systems use a higher percentage of UVA rays which penetrate more deeply and can permanently damage the lower layers of skin and increase the incidences of skin cancers. High-pressure systems require fewer and less frequent sessions to maintain a tan.

3. The exposure schedule for each specific unit is shown on the labeling on the tanning unit. Iowa law requires the operator to limit the exposure of each consumer to the exposure schedule shown on the unit in which the consumer is tanning.

These rules are intended to implement Iowa Code chapter 136D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 153
“Smokefree Air”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 142D
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 142D (Smokefree Air Act)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 153 defines the procedure for implementing Iowa’s Smokefree Air Act. This includes the duty of employers, owners, or other persons having control of an area where smoking is prohibited to inform employees and persons accessing the site of that prohibition through proper signage. The rules also describe the procedure for receiving complaints and implementing enforcement actions against persons who fail to comply with provisions of the Act. Enforcement action may be taken against a person who smokes in an area where smoking is prohibited or a person who owns, operates, manages or otherwise has custody or control of a place where smoking is prohibited and fails to properly prohibit smoking.

This chapter describes the procedure to support the requirements for signage, complaints, and enforcement detailed in the Iowa Code. This chapter does not create additional, substantive requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Employers, owners, operators, managers, and persons having custody or control of an area declared nonsmoking.
Persons who smoke in an area where smoking is prohibited.
 - Classes of persons that will benefit from the proposed rulemaking:
Persons who inhabit or otherwise use an area declared nonsmoking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

Estimated figures below are projections based on past program performance as included in the Red Tape Rule Report for this chapter.

Identified Impacts*

| | SFY 2024 | SFY 2025 | SFY 2026 | SFY 2027 | SFY 2028 | Five-Year Total |
|-----------------------------------|-------------|-------------|-------------|-------------|-------------|-----------------|
| Costs | | | | | | |
| HHS Implementation | \$10,800 | \$10,800 | \$10,800 | \$10,800 | \$10,800 | \$54,000 |
| Signage in Nonsmoking Areas | \$6,200 | \$6,200 | \$6,200 | \$6,200 | \$6,200 | \$31,000 |
| Benefits | | | | | | |
| Citations and Civil Penalties | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| Improved Public Health and Safety | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |

*All monetary figures have been rounded to the nearest thousandth.

- Qualitative description of impact:

Enforcing the Smokefree Air Act through proper signage in designated nonsmoking areas and enforcement actions against those in noncompliance ensures the law is being implemented as intended to prevent secondhand smoke exposure, thus protecting public health and safety.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs personnel costs for team members to oversee the procedures described in this chapter. These costs are reflected in the figure above, labeled as “HHS Implementation.”

- Anticipated effect on state revenues:

No impact identified.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost-benefit analysis above indicates improved public health and safety. Enforcement costs are also defrayed through citations and civil penalties pursuant to the Iowa Code. Eliminating the signage and complaint/enforcement procedures detailed in this chapter could result in confusion among property owners and the public in how to comply with the law. This may lead to increased noncompliance that could drive an increase in citations and civil penalties and a negative impact on public health and safety.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

HHS has established signage requirements and complaint procedures at the level it believes is necessary to protect public health and safety. Citation and civil penalty enforcement is implemented as defined in the Iowa Code. A less costly method has not been identified to achieve the purpose of this chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
HHS implements the Smokefree Air Act in accordance with requirements of the Iowa Code.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 153 and adopt the following new chapter in lieu thereof:

CHAPTER 153
SMOKEFREE AIR

641—153.1(142D) Definitions. For the purposes of this chapter, definitions found in Iowa Code section 142D.2 and the following definitions apply:

“*Ashtray*” means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs. However, “ashtray” shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter of school grounds, or the perimeter of any other outdoor space subject to the prohibition in Iowa Code chapter 142D.

“*Entrance*” means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. “Entrance” also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way.

“*Grounds of any public building*” means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody or control of an area that is exempt from the prohibitions of Iowa Code chapter 142D from declaring the entire area or property a nonsmoking place.

“*Public building*” means an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.

641—153.2(142D) Duties of employers, owners, operators, managers, and persons having custody or control of a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D or outdoor areas where smoking is prohibited.

153.2(1) The employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under Iowa Code chapter 142D shall:

a. Not permit smoking in a public place, place of employment, outdoor area where smoking is prohibited, or area declared nonsmoking pursuant to Iowa Code chapter 142D.

b. Inform all current employees and all prospective employees upon application for employment of the prohibitions of Iowa Code chapter 142D.

c. Not retaliate against any employee, applicant for employment, or customer who exercises any rights, registers a complaint, or attempts to prosecute a violation pursuant to Iowa Code chapter 142D.

d. Post signs in and at every entrance to the public place, place of employment, area declared nonsmoking, and outdoor area where smoking is prohibited that inform persons that they are entering a no smoking facility or area.

(1) The signs shall be clear and conspicuous in or at the entrance where posted.

(2) The signs shall be at least 24 square inches in size (for example, 4 inches by 6 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1.888.944.2247; and the department website, hhs.iowa.gov/smokefreeair.

e. Place no smoking signs in every vehicle that constitutes a public place, place of employment, or area declared nonsmoking pursuant to Iowa Code section 142D.5.

(1) Such signs shall be clear and conspicuous from the exterior of the vehicle.

(2) The signs shall be at least 9 square inches (for example, 3 inches by 3 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1.888.944.2247; and the department’s website, hhs.iowa.gov/smokefreeair.

(4) Nothing in this rule requires the placement of a sign in any vehicle that the director of the department of administrative services or the director of transportation orders to receive a regular registration plate pursuant to Iowa Code section 321.19.

f. Remove all ashtrays from areas where smoking is prohibited.

153.2(2) The owner or operator of a building or facility that contains more than one public place, place of employment, or area declared nonsmoking pursuant to Iowa Code chapter 142D which is controlled by other employers, owners, or operators shall comply with the provisions of these rules for the area of the building or facility under the owner’s or operator’s control.

153.2(3) An employer, owner, or operator of a public place, place of employment or area declared nonsmoking pursuant to Iowa Code chapter 142D that is within a public place that is owned or operated by another person shall comply with the provisions of these rules for the area under the control of the employer, owner, or operator within that public place.

153.2(4) An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under Iowa Code chapter 142D shall inform any individual smoking in a place where smoking is prohibited that the individual is violating the smokefree air Act and shall request that the individual stop smoking immediately.

a. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may discontinue service to that individual.

b. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may request that the individual leave the area where smoking is prohibited.

c. If the individual refuses to leave the area where smoking is prohibited, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

641—153.3(142D) Leases. Any lease entered into by the state or its political subdivisions shall require that all areas where smoking is prohibited pursuant to Iowa Code chapter 142D comply with the provisions of these rules and Iowa Code chapter 142D.

641—153.4(142D) Complaints and enforcement.

153.4(1) Duties of department. The department will maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of Iowa Code chapter 142D.

a. The department may designate one or more public agencies through a 28E agreement or other written contract to assist with enforcement.

b. The department may refer complaints regarding a violation to the law enforcement authorities of the state or of the political subdivision of the state in which the alleged violation occurred.

153.4(2) Enforcement against a person who smokes in an area where smoking is prohibited. Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. A peace officer may issue a citation in lieu of arrest pursuant to Iowa Code chapter 805 against a person who smokes in an area where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay a civil penalty pursuant to Iowa Code section 805.8C(3) for each violation.

153.4(3) Enforcement against a person who owns, operates, manages, or otherwise has control of a place where smoking is prohibited. Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. The department or its designee may initiate a civil action against an owner, operator, manager, or person who otherwise has custody or control of a place where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay the applicable civil penalty pursuant to Iowa Code chapter 142D.

153.4(4) Manner of filing a complaint. Any person may register a complaint with the department by calling the toll-free number, 1.888.944.2247, or registering a complaint on the department's website, hhs.iowa.gov/smokefreeair.

153.4(5) Contents of the complaint. A complaint filed with the department shall include:

a. The name or location of the public place, place of employment, area declared a nonsmoking place pursuant to Iowa Code chapter 142D, or outdoor area where smoking is prohibited which is the subject of the complaint;

b. A description of the occurrence that prompted the complaint; and

c. Any other information relevant to the occurrence.

153.4(6) Review of complaint by department. Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

153.4(7) Information from inspections. Information received by the department of one or more violations of Iowa Code chapter 142D as a result of an inspection of a public place by the state or political subdivision of the state shall be considered a credible complaint under this rule.

153.4(8) Notice of potential violation. If the department determines that a complaint against a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D, or outdoor areas where smoking is prohibited is credible:

- a.* For the first complaint, the department shall:
- (1) Issue a written notice of potential violation to the owner, operator or person having custody or control including the details of the complaint.
 - (2) Include in the notice educational materials about how to comply with Iowa Code chapter 142D, and information on whom to contact for further information and assistance for compliance.
- b.* For the second and subsequent complaints within one year, the department:
- (1) Shall issue a subsequent notice of potential violation to the owner, operator, or person having custody or control.
 - (2) May authorize one or more public agencies to conduct a compliance check of the location.
 - (3) May pursue any remedy authorized by Iowa Code chapter 142D, including the enforcement of civil penalties.

641—153.5(142D) Limitation of rules. Nothing in these rules is intended to limit any other state administrative rule or federal regulation that prohibits smoking.

These rules are intended to implement Iowa Code chapter 142D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 154
“Medical Cannabidiol Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 124E
State or federal law(s) implemented by the rulemaking: Not applicable

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yyp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

Proposed Chapter 154 implements a medical cannabidiol program for the in-state manufacture and dispensing of medical cannabis products for patients with qualifying debilitating medical conditions. Registration cards to purchase at a dispensary in Iowa are issued to patients who are at least 18 years of age, who are permanent residents of Iowa, and who are determined by a health care practitioner to suffer from a medical condition that qualifies for use of medical cannabidiol. Registration cards may also be issued to the primary caregivers of such patients.

The chapter defines licensing requirements for medical cannabidiol manufacturers and dispensaries, fees for application and licensure, safety protocols, marketing and advertising restrictions, and limits on manufacturing and dispensing. Manufacturers may only manufacture products in the forms recommended by the Medical Cannabidiol Board and approved by the Board of Medicine. The General Assembly maintains sole authority to revise the definition of medical cannabidiol.

HHS maintains a secure sales and inventory tracking system available to dispensaries 24 hours a day, seven days a week for the purpose of verifying that a person is lawfully in possession of a registration card and for tracking the date of the sale and quantity purchased. This system tracks products and inventory from creation by a manufacturer to transfers for testing and delivery, dispensing at a dispensary, and chain of custody; or “seed-to-sale.”

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The cost for these updates is included within application fees for medical cannabis patients and caregivers and license fees for licensees. Fees will not go up due to these changes.
 - Classes of persons that will benefit from the proposed rulemaking:
Medical cannabis patients and caregivers will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

| | SFY 2019 | SFY 2020 | SFY 2021 | SFY 2022 | SFY 2023 | Five-Year Total |
|-----------------------------------|-------------|-------------|-------------|-------------|-------------|-----------------|
| Costs | | | | | | |
| HHS Implementation | \$627,000 | \$898,000 | \$813,000 | \$809,000 | \$909,000 | \$4,056,000 |
| Benefits | | | | | | |
| Registration Card Fees | \$157,000 | \$305,000 | \$446,000 | \$827,000 | \$1,330,000 | \$3,065,000 |
| License and Application Fees | \$675,000 | \$400,000 | \$333,000 | \$220,000 | \$125,000 | \$1,753,000 |
| Improved Outcomes for Patients | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Improved Public Health and Safety | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative | Qualitative |
| Net Value | \$205,000 | -\$193,000 | -\$34,000 | \$238,000 | \$546,000 | \$762,000 |

*All monetary figures have been rounded to the nearest thousand.

The physical security requirements, manufacturer and dispensary data requirements, testing protocols, and other safeguards defined in this chapter ensure medical cannabidiol facilities operate in a manner protective of public health and safety.

- Qualitative description of impact:

HHS has not conducted an observational study on patient outcomes. HHS focuses on customer service metrics and strategies for improving the registration experience and processing time, which averages less than one day from submission to approval. Patient outcomes can also improve through reduction of the cost of participation, reduction of compliance and regulatory costs, and annual license fees to the industry.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs personnel costs for team members to support the regulation of the medical cannabidiol program. Additional expenses are incurred, mainly IT and software, to also support the regulation of the program and registration of patients and caregivers. These costs are reflected in the figure above, labeled as “HHS Implementation.”

The Department of Public Safety (DPS) incurs costs to conduct background investigations to support licensure of manufacturers and dispensaries and are paid by the industry to conduct necessary background checks. There are unknown costs to law enforcement for education and training on medical cannabis. These costs are unknown and not reflected in the figure above.

- Anticipated effect on state revenues:

The Medical Cannabidiol Act is a fee-based program, receives no appropriation, and does not impose a specific cost on the public. The program is funded by license application and annual fees from manufacturers and dispensaries and patient and caregiver application fees.

Licensed facilities pay an annual fee to HHS to cover costs associated with regulation, inspection, and other expenses necessary for the administration of the program, which have been reduced each

year. License application and annual fee revenues are reflected in the figure above. Patients issued registration cards are charged a fee of \$100 or \$25 per patient card, and primary caregivers are charged \$25. Registration cards expire one year from the date of issuance. This revenue is reflected in the figure above, labeled as “Registration Card Fees.”

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost-benefit analysis above reflects a net value of \$762,000 for FY 2019 through FY 2023 and indicates improved outcomes for patients with qualifying medical conditions and the industry that serves them. By investing in scalable IT solutions early on, the program has been able to limit traditional expenses as volume and revenue have increased.

Eliminating this chapter would remove HHS’s regulatory structure for the medical cannabidiol manufacturing and dispensing program, remove the procedural clarification of administrative rule to support the program, and introduce general and widespread regulatory uncertainty. This would create confusion among licensed entities, and possibly the misapplication of state law. This could result in adverse health impacts for patients by eliminating their safe and legal access to products for the treatment of their qualifying condition.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

No less costly methods were identified.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
HHS believes the regulatory approach defined in this chapter is at the level necessary to ensure public health and safety. Should adjustments be made, less restrictive alternatives might include the following:
 - Adjust sampling protocols to sample less frequently and/or sample for fewer contaminants;
 - Inspect facilities less often than annually or on an ad hoc basis;
 - Reduce the number or type of required safety elements such as physical property security systems and chain of custody;
 - Reduce the manufacturing and dispensary data required to be transmitted to HHS; or
 - Reduce restrictions related to marketing and other advertising of medical cannabidiol.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
HHS implements the medical cannabidiol program in accordance with requirements of the Iowa Code; overall, HHS implements the program as prescribed and has limited latitude in determining regulatory requirements. HHS maintains flexibility and authority for:
 - Setting sampling protocols and testing procedures for the testing of medical cannabidiol produced;
 - Determining the frequency of inspection of licensed facilities;
 - Determining the method, type, and frequency of certain operational data;
 - Setting specific criteria for the implementation of safety requirements; and
 - Setting reasonable restrictions related to marketing, signage, display, packaging, and advertising of medical cannabidiol.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 154 and adopt the following **new** chapter in lieu thereof:

CHAPTER 154
MEDICAL CANNABIDIOL PROGRAM

641—154.1(124E) Definitions. For the purposes of these rules, the following definitions shall apply:

“*Acceptance criteria*” means the specified limits placed on characteristics of an item or method that are used to determine data quality.

“*Action level*” means the threshold value that provides the criterion for determining whether a sample passes or fails a test performed pursuant to these rules.

“*Advertisement*” means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of medical cannabidiol.

“*Analyte*” means a chemical, compound, element, bacteria, yeast, fungus, or toxin to be identified or measured.

“*Analytical batch*” means a group of samples that are prepared together for the same analysis and analyzed sequentially using the same instrument calibration curve and common analytical quality control checks.

“*Analytical method*” means a technique used qualitatively or quantitatively to determine the composition of a sample or a microbial contamination of a sample.

“*Audit*” means a review by authorized personnel 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, an 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 specifically identified quantity of dried flower and other cannabis plant matter that is uniform in strain or cultivar, harvested at the same time, and cultivated using the same pesticides and other crop inputs.

“*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;
4. Living modified organisms.

“*Cannabinoid*” means a chemical compound that is unique to and derived from cannabis.

“*Cannabis*” means seeds, plants, cuttings, or plant waste material from *Cannabis sativa* L. or *Cannabis indica* used in the manufacture of medical cannabidiol.

“*CBD*” means cannabidiol, Chemical Abstracts Service number 13956-29-1.

“*CBD A*” means cannabidiolic acid, Chemical Abstracts Service number 1244-58-2.

“*Certificate of analysis*” means the report prepared for the requester about the analytical testing performed and the results obtained by a laboratory.

“*Certified*” means that a laboratory demonstrates to the satisfaction of the department its ability to consistently produce valid data within the acceptance limits as specified in the department’s requirements for certification and meets the minimum requirements of this chapter and all applicable regulatory requirements.

“*Certified reference material*” means a reference material prepared by a certifying body.

“*Combusted*” means the addition of a flame to medical cannabidiol or raw flower cannabis for the purposes of burning for inhalation, or smoking cannabis.

“*Consumable hemp product*” means a hemp product that includes a substance that is metabolized or is otherwise subject to a biotransformative process when introduced into the human body.

1. A consumable hemp product may be introduced into the human body by ingestion or absorption by any device including but not limited to an electronic device.

2. A consumable hemp product may exist in a solid or liquid state.

3. A hemp product is deemed to be a consumable hemp product if it is any of the following:

- Designed by the processor, including the manufacturer, to be introduced into the human body.
- Advertised as an item to be introduced into the human body.
- Distributed, exported, or imported for sale or distribution to be introduced into the human body.

“Consumable hemp product” includes but is not limited to any of the following:

1. A noncombustible form of hemp that may be digested, such as food; internally absorbed, such as chew or snuff; or absorbed through the skin, such as a topical application.

2. Hemp processed or otherwise manufactured, marketed, sold, or distributed as food, a food additive, a dietary supplement, or a drug.

“Consumable hemp product” does not include a hemp product if the intended use of the hemp product is introduced into the human body by any method of inhalation, as prohibited under Iowa Code section 204.14A.

“*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.

“*Date of issuance*” means the date of issuance of the medical cannabidiol registration card by the department.

“*Debilitating medical condition*” means the same as defined in Iowa Code section 124E.2.

“*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 the same as defined in Iowa Code section 124E.2.

“*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.

“*Field duplicate sample*” means a sample that is taken in the identical manner and from the same batch, process lot, or lot being sampled as the primary sample. A field duplicate sample is analyzed separately from the primary sample and is used for quality control only.

“*Health care practitioner*” means the same as defined in Iowa Code section 124E.2.

“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.

“Investor” means a person making a cash investment of at least 5 percent interest in an applicant or licensed manufacturer or dispensary with the expectation of receiving financial returns.

“Laboratory” means the same as defined in Iowa Code section 124E.2.

“Limit of detection” or *“LOD”* means the lowest quantity of a substance or analyte that can be distinguished from the absence of that substance within a stated confidence limit.

“Limit of quantitation” or *“LOQ”* means the minimum concentration of an analyte in a specific matrix that can be reliably quantified while also meeting predefined goals for bias and imprecision.

“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.

“Matrix” means the component or substrate that contains the analyte of interest.

“Matrix spike duplicate” means a duplicate sample prepared by adding a known quantity of a target analyte to a field sample matrix or other matrix that is as closely representative of the matrix under analysis as possible.

“Matrix spike sample” means a sample prepared by adding a known quantity of the target analyte to a field sample matrix or to a matrix that is as closely representative of the matrix under analysis as possible.

“Medical assistance program” means IA Health Link, Medicaid Fee-for-Service, or hawki, as administered by the Iowa Medicaid enterprise of the department.

“Medical cannabidiol” means the same as defined in Iowa Code section 124E.2.

“Medical cannabidiol waste” means medical cannabidiol that is unused, unwanted, damaged, defective, expired, or contaminated and that is returned to a dispensary or manufacturer for disposal.

“Medical cannabis goods” means medical cannabidiol process lots, medical cannabidiol products, and cannabis plant material, including dried tissue.

“Method blank” means an analyte-free matrix to which all reagents are added in the same volumes or proportions as are used in sample preparation.

“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.

“Owner” means a person with a 5 percent or greater ownership interest in an applicant or licensed manufacturer or dispensary.

“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 Iowa Code chapter 124E and these rules.

“*Patient registration number*” means the unique identification number issued to a patient by the department upon approval of a patient’s application by the department as described in these rules.

“*Percent recovery*” means the percentage of a measured concentration relative to the added (spiked) concentration in a reference material, matrix spike sample, or matrix spike duplicate.

“*Plant material*” means any plant of *Cannabis sativa* L. or *Cannabis indica*, or any part thereof, including flowers, leaves, trichomes, and tissue.

“*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 the same as defined in Iowa Code section 124E.2.

“*Primary care provider*” means any health care practitioner involved in the diagnosis and treatment of a patient’s debilitating medical condition.

“*Primary sample*” means a portion of a batch, process lot, or lot that is used for testing for identity, strength, purity, and composition.

“*Process lot*” means any amount of cannabinoid concentrate or extract that is uniform, produced from one or more batches, and used for testing for identity, strength, purity, and composition prior to being packaged.

“*Product expiration date*” means the date after which a medical cannabidiol product is sold by a manufacturer or a dispensary.

“*Production*” or “*produce*” means:

1. Cultivating or harvesting plant material;
2. Processing or manufacturing; or
3. Packaging of medical cannabidiol.

“*Proficiency test*” means an evaluation of a laboratory’s performance against preestablished criteria by means of interlaboratory comparisons of test measurements.

“*Qualitative analysis*” means identification of an analyte in a substance or mixture.

“*Quality assurance*” means a set of operating principles to produce data of known accuracy and precision. “Quality assurance” encompasses employee training, equipment preventative maintenance procedures, calibration procedures, and quality control testing, among other things.

“*Quality control*” means a set of measures implemented within an analytical procedure to ensure that the measurement system is operating in a state of statistical control in which errors have been reduced to acceptable levels.

“*Quality control samples*” means samples produced and used for the purpose of ensuring quality control. Quality control samples include but are not limited to blank samples, spike samples, duplicate samples, and reference material samples.

“*Reagent*” means a compound or mixture added to a system to cause a chemical reaction or to test if a reaction occurs. A reagent may be used to tell whether or not a specific chemical substance is present by causing a reaction to occur with the chemical substance.

“*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.

“*Reference material*” means a material containing a known concentration of an analyte of interest that is in solution or in a homogeneous matrix. Reference material is used to document the bias of the analytical process.

“*Relative percent difference*” or “*RPD*” means a comparative statistic used to calculate precision or random error. RPD is calculated using the following equation: $RPD = \frac{\text{absolute value (primary sample measurement - duplicate sample measurement)}}{([\text{primary sample measurement} + \text{duplicate sample measurement}] / 2)} \times 100$.

“*Requester*” means a person who submits a request to a licensed testing laboratory for state-mandated testing of medical cannabis goods. The requester may be a licensed manufacturer or the department.

“*Residual solvents and processing chemicals*” means volatile organic chemicals that are used or produced in the manufacture or production of 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.

“*Sample*” means a representative part of or a single item from a larger whole or group.

“*Sanitize*” means to sterilize, disinfect, or make hygienic.

“*Security alarm system*” means the same as defined in rule 661—277.2(100C).

“*Semiquantitative analysis*” means less than quantitative precision and does not involve a full calibration. Analyte identification is based on a single-point reference or high-probability library match. The determination of amount uses the ratio of the unknown chemical analyte to that of a known analyte added to the sample before analysis. Uncertainty for semiquantitative results is higher than for quantitative results.

“*Significant figures*” means the number of digits used to express a measurement.

“*Stability study*” or “*studies*” means the process of determining the shelf-life or expiration date of a medical cannabidiol product. After storage of an unopened package of medical cannabidiol at a licensed manufacturing facility or dispensary facility, the contents shall not vary in concentrations of THC and CBD by more than an amount determined by the department and listed in the laboratory testing requirements and acceptance criteria document described in 641—Chapter 154.

“*Standard operating procedure*” means a written document that provides detailed instructions for the performance of all aspects of an analysis, operation, or action.

“*Synthetic or semisynthetic cannabinoid*” means a cannabinoid extracted from a cannabis plant, a cannabis flower, a hemp plant, or hemp plant parts with a chemical makeup that is changed after extraction to create a different cannabinoid or other chemical compound by applying a catalyst other than heat or light. “Synthetic or semisynthetic derived cannabinoid” includes but is not limited to any tetrahydrocannabinol created from cannabidiol.

“*Tamper-evident*” means that one or more one-time-use seals are affixed to the opening of a package, allowing a person to recognize whether or not the package has been opened.

“*Testing laboratory record*” means information relating to the testing laboratory and the analyses it performs that is prepared, owned, used, or retained by the laboratory and includes electronic files and video footage.

“*THC*” or “*delta-9 THC*” means tetrahydrocannabinol, Chemical Abstracts Service number 1972-08-3.

“*THCA*” means tetrahydrocannabinolic acid, Chemical Abstracts Service number 23978-85-0.

“*Total tetrahydrocannabinol*” means 87.7 percent of the amount of tetrahydrocannabinolic acid plus the amount of tetrahydrocannabinol.

“*Tracking number*” means the sales identification number assigned by a dispensary to a transaction at the time of the sale of a medical cannabidiol product.

“*Trade name*” means the name which manufacturers give to a product or range of products.

“*Validation*” means the confirmation by examination and objective evidence that the particular requirements for a specific intended use are fulfilled.

“*Vaporization*” means the heating of a medical cannabidiol concentrate or extract to a specific temperature using a device. For the purposes of these rules, vaporization does not include raw or dried cannabis flower.

“*Valid photo identification*” means any of the following for a patient or primary caregiver: (1) valid Iowa driver’s license, (2) valid Iowa nonoperator’s identification card, (3) an alternative form of valid photo identification. An individual who possesses or is eligible for a driver’s license or a nonoperator’s identification card shall present such document as valid photo identification. An individual who is ineligible to obtain a driver’s license or a nonoperator’s identification card may apply for an exemption and request submission of an alternative form of valid photo identification. An individual who applies for an exemption is subject to verification of the primary caregiver’s identity through a process established by the department to ensure the genuineness, regularity, and legality of the alternative form of valid photo identification.

“*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.

REGISTRATION CARDS

641—154.2(124E) Health care practitioner certification—duties and prohibitions.

154.2(1) Prior to a patient’s submission of an application for a medical cannabidiol registration card pursuant to this rule, a health care practitioner shall follow all provisions of Iowa Code section 124E.3, this chapter and requests from the department for more information.

a. The written documentation required by Iowa Code section 124E.3(1) “*a*” shall be submitted on the application form at the department’s website.

b. Explanatory information pursuant to Iowa Code section 124E.3(1) “*b*” is located at the department’s website.

154.2(2) A health care practitioner may make a written request to the department to rescind a written certification the practitioner previously provided, based on reasons deemed appropriate by the health care practitioner.

154.2(3) Health care practitioner prohibitions. A health care practitioner shall not:

a. Accept, solicit, or offer any form of remuneration from or to any individual, including but not limited to a patient, a primary caregiver, or an employee, investor, or owner of a manufacturer or dispensary for the purposes of:

(1) Certifying a patient’s condition, other than accepting a fee for a patient consultation to determine if the patient should be issued a certification under Iowa Code chapter 124E.

(2) Certifying an individual as a primary caregiver, other than accepting a fee for a consultation to determine if the individual is a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol.

b. Advertise the certification of patients as one of the health care practitioner’s services.

c. Certify a qualifying debilitating medical condition for a patient who is the health care practitioner or a family or household member of the health care practitioner.

d. Be designated to act as a primary caregiver for a patient for whom the health care practitioner has certified a qualifying debilitating medical condition.

e. Receive or provide medical cannabidiol product samples.

641—154.3(124E) Medical cannabidiol registration card—application and issuance to patient.

154.3(1) The department may issue a registration card to a patient who meets the criteria listed at Iowa Code section 124E.4(1). The application form is available on the department’s website. The department shall not approve an application that does not include the information requested on the application form.

154.3(2) Upon the completion, verification, and approval of the patient’s application and the receipt of the required fee, the department shall issue a registration card to the patient.

154.3(3) A registration card issued to a patient shall contain all of the following:

a. The patient’s full legal name, Iowa residence address, date of birth, and sex designation, as shown on the patient’s valid photo identification. If the patient’s information has changed since the issuance of the patient’s valid photo identification, the patient shall first update the patient’s valid identification to reflect the patient’s current information.

b. The date of issuance and the date of expiration, which shall be one year from the date of issuance.

c. A distinguishing registration number that is not the patient’s social security number.

d. A statement that the registration card is not valid for identification purposes.

154.3(4) Every patient 18 years of age or older must obtain a valid registration card to use medical cannabidiol in Iowa.

154.3(5) An authorization to use medical cannabidiol or cannabis for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of Iowa Code chapter 124E and is not a valid registration card for purposes of purchasing medical cannabidiol at dispensaries in Iowa.

641—154.4(124E) Medical cannabidiol registration card—reciprocity. A registration card's reciprocity with other states is established in Iowa Code section 124E.18.

154.4(1) A patient with a valid registration card from another state or jurisdiction maintains the affirmative defense for possession of medical cannabidiol provided the cannabis product in their possession may be manufactured and sold at a licensed dispensary in Iowa.

154.4(2) A patient with a valid registration card under the laws of another state or jurisdiction has no affirmative defense for possession of medical cannabidiol if the cannabis product in their possession may not be manufactured and sold at a licensed dispensary in Iowa. Prohibited forms of medical cannabidiol include:

- a. Raw cannabis flower that may be combusted or smoked;
- b. Edible products with a "total THC" concentration greater than 0.3 percent that is not a consumable hemp product.

641—154.5(124E) Medical cannabidiol registration card—application and issuance to primary caregiver.

154.5(1) For a patient in a primary caregiver's care, the department may issue a registration card to a primary caregiver who meets the criteria listed at Iowa Code section 124E.4(3). The application form is available on the department's website. The department shall not approve an application that does not include the information requested on the application form.

154.5(2) Upon the completion, verification, and approval of the primary caregiver's application, the department shall issue a registration card to the primary caregiver.

154.5(3) A registration card issued to a primary caregiver shall contain all of the following:

a. The primary caregiver's full legal name, current residence address, date of birth, and sex designation, as shown on the primary caregiver's valid photo identification. If the primary caregiver's information has changed since issuance of the primary caregiver's valid photo identification, the primary caregiver shall first update the primary caregiver's valid photo identification to reflect the primary caregiver's current information.

b. The date of issuance and the date of expiration, which shall be one year from the date of issuance.

c. A distinguishing registration number that is not the primary caregiver's social security number.

d. The registration number for each patient in the primary caregiver's care. This number shall not be the primary caregiver's or patient's social security number. If the patient in the primary caregiver's care is under the age of 18, the full name of the patient's parent or legal guardian shall be printed on the primary caregiver's registration card in lieu of the patient's registration number.

e. A statement that the registration card is not valid for identification purposes.

f. A statement distinguishing the registration cardholder as a primary caregiver.

154.5(4) An authorization to use, or to act as a primary caregiver for a patient authorized to use medical cannabidiol or cannabis for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of Iowa Code chapter 124E and is not a valid registration card for purposes of purchasing medical cannabidiol at dispensaries in Iowa.

641—154.6(124E) Denial and cancellation. The department may deny an application for a registration card, or may cancel a registration card, for any of the following reasons:

1. Information contained in the application is illegible, incomplete, falsified, misleading, deceptive, or untrue.

2. The department is unable to verify the identity of the applicant from the photo identification or other documentation presented during application.

3. The department has reasonable belief, or proof, that the patient is engaged in diversion of medical cannabidiol.
4. The applicant violates or fails to satisfy any of the provisions of Iowa Code chapter 124E or these rules.
5. A patient, the patient's legal guardian, or other person with durable power of attorney requests in writing that the department cancel the patient's registration card. The department shall notify a primary caregiver in writing when the registration card of the primary caregiver's patient has been canceled.
6. A primary caregiver requests in writing that the department cancel the primary caregiver's registration card. The department shall notify a patient in writing when the registration card of the patient's primary caregiver has been canceled.
7. The department becomes aware of the death of a patient or primary caregiver.
8. A health care practitioner requests in writing that the department rescind the written certification the practitioner provided to a patient or caregiver.
9. A patient requests in writing that the department cancel the patient's primary caregiver's registration card.

641—154.7(124E) Appeal.

154.7(1) *Written notice of denial or cancellation.* If the department denies an application for or cancels a registration card, the department shall inform the applicant or cardholder of the denial or cancellation, state the reasons for the denial or cancellation in writing, and state the effective date of the denial or cancellation. If the department cancels a card upon request from a patient or primary caregiver, or the department becomes aware of the death of a patient or primary caregiver, the cancellation is effective immediately upon issuance of the written notice of cancellation. If the department cancels a card upon any other ground listed, the cancellation shall become effective 30 days following issuance of the written notice of cancellation.

154.7(2) *Effect of written notice of cancellation on use and possession of medical cannabidiol.* A cardholder is authorized to purchase, possess, and use medical cannabidiol up to and including the effective date of the cancellation. For purposes of the affirmative defenses in Iowa Code section 124E.12, a patient or primary caregiver shall be deemed to be in possession of a valid registration card up to and including the effective date of the cancellation.

154.7(3) *Request for appeal.* A request for appeal concerning the denial or cancellation of a registration card shall be submitted pursuant to the provisions of 441—Chapter 7. In the event of a timely appeal, cancellation of the card shall be deemed to be suspended pending the outcome of the contested case proceeding. If the cancellation is affirmed following the contested case proceeding, the card cancellation shall become effective 30 days following issuance of the department's final agency action.

641—154.8(124E) Duplicate card.

154.8(1) *Lost, stolen, or destroyed card.* To replace a registration card that is lost, stolen, or destroyed, a cardholder shall present to the department the cardholder's valid photo identification that was provided at the time of application.

154.8(2) *Change in card information and voluntary replacement.*

a. To replace a registration card that is damaged, the cardholder shall surrender the card to be replaced to the department and present the cardholder's valid photo identification that was provided at the time of application.

b. A patient or primary caregiver to whom a registration card is issued shall notify the department of a change in information listed on the card, within ten calendar days of the change. To replace a registration card to change the patient or primary caregiver's information, the cardholder shall surrender the card to be replaced to the department and present the patient or primary caregiver's updated valid photo identification.

c. To replace a registration card held by a primary caregiver to change, add, or remove a patient's registration number or the name of a patient's parent or legal guardian listed on the primary

caregiver's card, the primary caregiver shall submit a new application to the department pursuant to rule 641—154.5(124E). A registration card issued pursuant to this paragraph shall not be considered a duplicate card.

154.8(3) Expiration date. A duplicate registration card shall have the same expiration date as the registration card being replaced, changed, or amended.

641—154.9(124E) Renewal. A registration card shall be valid for one year from the date of issuance, unless canceled. Renewal of a registration card will follow the application and issuance rules of this chapter.

641—154.10(124E) Confidentiality. The department will follow the confidentiality provisions in Iowa Code section 124E.11(1).

154.10(1) Personally identifiable information of patients and primary caregivers will be maintained as confidential and is not accessible to the public. The department will release aggregate and statistical information regarding the registration card program in a manner which prevents the identification of any patient or primary caregiver.

154.10(2) Personally identifiable information of patients and primary caregivers may be disclosed only pursuant to Iowa Code section 124E.11(1)“b” and to a patient, primary caregiver, or health care practitioner, upon written authorization of the patient or primary caregiver.

641—154.11(124E) Fees. All fees are nonrefundable. Application fees are established in Iowa Code section 124E.4.

641—154.12(124E) Consumption of medical cannabidiol. Medical cannabidiol should be consumed privately, and patients are subject to all applicable laws regarding public impairment and operating a vehicle, including but not limited to Iowa Code section 123.46 and chapter 321J. Medical cannabidiol products shall not be consumed on the property of a medical cannabidiol dispensary or manufacturer.

641—154.13(124E) Allowable forms of medical cannabidiol.

154.13(1) Modification of allowable forms. Allowable forms of medical cannabidiol may be modified by approval of a recommendation by the medical cannabidiol board, subsequent approval of the board of medicine, and adoption of the recommendations by the department.

154.13(2) Allowable forms.

a. A manufacturer may only manufacture medical cannabidiol in the following forms:

(1) Oral forms, including but not limited to:

1. Tablet.
2. Capsule.
3. Liquid.
4. Tincture.
5. Sublingual.

(2) Topical forms, including but not limited to:

1. Gel.
2. Ointment, cream or lotion.
3. Transdermal patch.

(3) Inhaled forms, limited to:

1. Nebulizable.
2. Vaporizable.

(4) Rectal/vaginal forms, including but not limited to suppository.

b. A manufacturer shall not produce medical cannabidiol in any form that may be smoked.

- c. A manufacturer shall not produce edible medical cannabidiol products.

MANUFACTURER AND DISPENSARY LICENSING

641—154.14(124E) Notice to law enforcement. The department shall notify local law enforcement agencies and the department of public safety of the locations of manufactures and 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.

641—154.15(124E) Manufacturer and dispensary licensure.

154.15(1) To be eligible for licensure, an applicant manufacturer or dispensary shall complete a background investigation pursuant to Iowa Code section 124E.19. Applicants must provide information on forms and in a manner required by the department of public safety.

154.15(2) The license shall be renewed annually unless a manufacturer or 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.

154.15(3) A license to manufacture or dispense medical cannabidiol issued by the department is not assignable or transferable.

641—154.16(124E) Collection of fees in competitive licensing. 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.

154.16(1) Fees to the department for manufacturers and dispensaries.

a. Fees for manufacturing applicants are established by Iowa Code section 124E.6(4). Fees for dispensary applicants are established by Iowa Code section 124E.8(4).

b. Licensed manufacturers and dispensaries shall pay an annual fee to the department to cover costs associated with regulating and inspecting, 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, payable to the department no later than December 1. Annual fees assessed by the department shall not exceed \$100,000 for a manufacturing license and shall not exceed \$50,000 for a dispensary license.

154.16(2) Fees to the department of public safety.

a. An applicant manufacturer or dispensary shall reimburse the department of public safety the full cost of conducting background investigations related to an application for licensure. The department of public safety retains the right to bill a licensee for additional background investigations, as needed.

b. Each manufacturer or dispensary awarded a license shall, at the time of notice of award to license, 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 or dispensary.

c. A licensed manufacturer or 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 manufacturer or dispensary. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the manufacturer or 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 manufacturer or 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.

154.16(3) Criminal background checks.

a. A manufacturer or the 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 record check.

b. An employee of a manufacture or 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.

c. An applicant or licensed manufacture or dispensary shall respond within 30 days to a request from the department or the department of public safety for more information to complete a background investigation and national criminal history background check on an owner, investor, or employee.

641—154.17(124E) Licensure renewal.

154.17(1) A licensed manufacturer or dispensary shall apply to renew its license with the department at least six months before the license expires. The application shall be submitted on a form on the department's website.

154.17(2) The department shall notify a manufacturer or dispensary of the decision to approve or deny the manufacturer or dispensary's license by August 1 of the year in which the renewal application is submitted.

641—154.18(124E) Suspension or revocation of a manufacturing or dispensary license.

154.18(1) The department may suspend or revoke a manufacturer or 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 manufacturer or dispensary's business owner or investors to have a satisfactory result in a background investigation or national criminal history background check as determined by the department.

154.18(2) The department shall notify the manufacturer or dispensary 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.

154.18(3) A request for appeal concerning the suspension or revocation of a license shall be submitted pursuant to the provisions of 441—Chapter 7.

641—154.19(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—154.20(124E) Closure of operations.

154.20(1) A manufacturer or dispensary shall notify the department at least six months before the closure of the manufacturing facility.

154.20(2) If a manufacturer or dispensary ceases operation, the manufacturer or dispensary shall work with the department to verify the remaining inventory of the manufacturer or dispensary and ensure that any plant material, plant material waste, and/or medical cannabidiol products are destroyed at a waste facility or returned to a manufacturer.

641—154.21(124E) Manufacturer and dispensary security requirements.

154.21(1) *Restricted access.* A manufacturer or dispensary shall limit entrance to all restricted areas by completing all of the following:

a. Mark restricted access areas with signs that state: “Do Not Enter – Restricted Access Areas Access Limited to Authorized Personnel Only”.

b. Use a controlled access system that:

(1) Limits access to authorized individuals;

(2) Maintains a log of individuals with approved access, including dates of approvals and revocations;

(3) Tracks times of personnel entry to and exit from the facility;

(4) Stores data for retrieval for a minimum of one year; and

(5) Limits access to authorized individuals in the event of a power failure.

c. If the controlled access system cannot electronically record visitors, visitors to restricted access areas sign manifests with name, date, and times of entry and exit. These manifests shall be kept and stored for a minimum of one year.

d. Visitors wear badges that are visible at all times and identify them as visitors.

e. If requested by the department, submit stored controlled access system data to the department within five business days.

154.21(2) *Perimeter intrusion detection system.*

a. Computer-controlled video surveillance system. A manufacturer or dispensary shall operate and maintain 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, if applicable;

(2) All areas that might contain plant material and/or medical cannabidiol;

(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 manufacturer or dispensary or its parking areas;

(2) Produce a clear, color still photograph live or from a recording;

(3) Have 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. Video recording equipment shall:

(1) Export still images in an industry standard image format, such as .jpg, .bmp, or .gif;

(2) Archive exported video in a format that ensures authentication and guarantees that the recorded image has not been altered; and

(3) Save exported video shall be saved in an industry standard file format that can be played on a standard computer operating system.

d. Location. 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 manufacturer or dispensary shall ensure that recordings from all video cameras are:

- (1) Available for viewing by the department upon request;
- (2) Retained for at least 60 days; and
- (3) Maintained free of alteration or corruption.

f. Required signage. A manufacturer or dispensary shall post a sign in capital letters in a conspicuous location at every entrance to the manufacturing facility or dispensary that reads, "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE."

154.21(3) Security alarm system requirements.

a. A manufacturer or dispensary shall use a professionally monitored security alarm system that provides intrusion and fire detection of all the following:

- (1) Dispensary entrances and exits;
- (2) Facility entrances and exits;
- (3) Rooms with exterior windows;
- (4) Rooms with exterior walls;
- (5) Roof hatches;
- (6) Skylights; and
- (7) Storage rooms.

b. A manufacturer or dispensary's security alarm system and all devices shall continue to operate during a power outage.

c. A manufacturer or dispensary shall provide documentation of the annual inspection and device testing, by a qualified alarm vendor, to the department upon request.

154.21(4) Personnel identification system. A manufacturer or dispensary shall use a personnel identification system that controls and monitors individual employee access to restricted access areas.

a. 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 or dispensary'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 or dispensary shall immediately:

- (1) Revoke the employee's access to the manufacturing facility or dispensary; and
- (2) Destroy the employee's identification card, if possible.

641—154.22(124E) Advertising and marketing.

154.22(1) Permitted marketing and advertising activities. A manufacturer or dispensary must include medical cannabidiol pricing and hours of operation on its website and may do the following:

a. Display the manufacturer or dispensary's business name and logo on medical cannabidiol labels, signs, website, 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.

b. Display signs on the manufacturing facility or dispensary; and

c. Maintain a business website that contains the following information:

- (1) The manufacturer or dispensary's name and contact information;
- (2) The medical cannabidiol forms and quantities manufactured or available in Iowa; and
- (3) Other information as approved by the department.

154.22(2) Prohibited conduct, statements and illustration.

a. An advertisement for medical cannabidiol shall not contain:

- (1) Colloquial references to cannabis;
 - (2) Names of cannabis plant strains or varieties;
 - (3) Any statement that is false or misleading;
 - (4) Any statement that disparages a competitor's products;
 - (5) Any statement, design, or representation, picture or illustration that is obscene or indecent;
 - (6) Any statement, design, representation, picture or illustration that reasonably appeals to or targets children. Appealing to children means:
 1. When taken literally or as a plain language reading, there is a resemblance to food or product used by children;
 2. Contains child-appealing visuals/graphics, such as intense colors, bubble letters, or other interesting fonts or lettering;
 3. Unconventional or interesting product names;
 4. Unconventional or unexpected flavor, color, or shape of the product;
 5. Games or activities present on the package; or
 6. Presence of branded characters, spokespersons, licensed characters, cartoons, or celebrities;
 - (7) Any statement, design, representation, picture or illustration that encourages or represents the use of medical cannabidiol for a condition other than a qualifying debilitating medical condition;
 - (8) Any statement, design, representation, picture or illustration that encourages or represents the recreational use of medical cannabidiol or marijuana, tobacco or nicotine products, or alcohol;
 - (9) Any statement, design, representation, picture or illustration related to the safety or efficacy of medical cannabidiol, unless supported by substantial evidence, substantial clinical data, and/or direct patient testimonials;
 - (10) Any statement, design, representation, picture or illustration portraying anyone reasonably appearing to be under the age of 18, objects suggestive of the presence of anyone under the age of eighteen, or containing the use of a figure, symbol or language that is customarily associated with anyone under the age of eighteen, except that an advertisement may address medical cannabidiol products as they relate to minor patients;
 - (11) Any offer of a prize, award or inducement to a qualifying patient, primary caregiver, or health care practitioner related to the purchase of medical cannabidiol or a certification for the use of medical cannabidiol, except that non-product specific price discounts are allowed;
 - (12) Any statement or assertion that medical cannabidiol products are safe because they are regulated under this chapter or have been tested by an approved laboratory;
 - (13) Any reference to a prohibited form of medical cannabidiol;
 - (14) Any statement which claims that medical cannabidiol products are endorsed or supported by any government agency; or
 - (15) Any statement that indicates or implies that the product or entity in the advertisement has been approved or endorsed by the department, the state of Iowa or any person or entity associated with the state of Iowa.
- b. A manufacturer or dispensary shall not engage in any of the following activities:
- (1) Host, promote, refer, or otherwise advertise a third-party patient certification service;
 - (2) Engage in any advertising, marketing, or branded educational activities within 1,000 feet of a school;
 - (3) Host, promote, sponsor, or otherwise participate in a cannabis consumption lounge or other such encouragement of public consumption of cannabis or medical cannabidiol; or
 - (4) Advertise, or make reference to, non-approved forms of medical cannabidiol in any of its advertisements, including, but not limited to:
 1. Referring to an approved form of medical cannabidiol as a prohibited form of medical cannabidiol.

2. Advertising non-approved forms of medical cannabidiol. Consumable hemp products regulated under Iowa Code chapter 204 and 641—Chapter 156 are exempt from this provision.

154.22(3) Review of advertisements by the department. Any advertisement for medical cannabidiol shall be submitted to the department, on a form or in a format prescribed by the department, at the same time as, or prior to, the dissemination of the advertisement.

a. The department may:

(1) Require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the department determines that the advertisement would be false or misleading without such a disclosure; or

(2) Require changes that are necessary to protect the public health, safety and welfare; or

(3) Require statements for inclusion in the advertisement to address the specific efficacy of medical cannabidiol as it relates to specific disease states or approved debilitating medical conditions, disease symptoms, and population groups.

b. The department reserves the right to require that a licensee amend or remove a public advertisement.

641—154.23(124E) 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:

1. Inventory of plant material and medical cannabidiol;

2. Transport of plant material, and laboratory samples;

3. Application and use of crop inputs and other solvents and chemicals;

4. Sales of medical cannabidiol to dispensaries;

5. Sales of medical cannabidiol from dispensaries to patients and primary caregivers.

641—154.24(124E) Financial transactions.

154.24(1) A manufacturer or dispensary shall maintain records that reflect all financial transactions and the financial condition of the business.

154.24(2) 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; and

d. Records of all financial transactions, including contracts and agreements for services performed or services received.

641—154.25(124E) Inspection by department or independent consultant. A manufacturer or dispensary 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.

154.25(1) Types of inspections. Inspections may include:

a. Aspects of the business operations;

b. The manufacturing facility or the physical location of a dispensary, including any storage 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;

f. Health and sanitary inspection; and

g. Other inspections as determined by the department.

154.25(2) Compliance required. A manufacturer or dispensary shall respond to deficiencies found during inspections or inventory reconciliation as follows:

- a. Deficiencies not related to inventory reconciliation.
 - (1) Upon written notification by the department of deficiencies that do not involve reconciliation of inventory, a manufacturer or dispensary shall have up to 30 days to submit an action plan to the department with proposed remedies and timelines for completion of the remedies.
 - (2) The department shall have up to two weeks to accept or require revision of the action plan.
- b. Deficiencies related to inventory reconciliation.
 - (1) Upon notifying the department that the manufacturer or dispensary cannot reconcile the physical inventory with the inventory recorded in the secure sales and inventory tracking system, the manufacturer or dispensary shall have up to two business days to submit an action plan to the department with proposed remedies and timelines for completion of the remedies.
 - (2) The department shall have up to two business days to accept or require revision of the action plan.
 - (3) Failure to complete actions in the action plan within the timelines mutually agreed upon by the manufacturer and the department shall result in assessment of penalties or in suspension or revocation of a manufacturer or dispensary license.
 - (4) At the department's request and in a timely manner, a manufacturer or dispensary shall pay for and undergo an independent health and sanitary inspection in accordance with this rule.

MANUFACTURING

641—154.26(124E) Manufacturer operations.

154.26(1) Operating documents.

- a. A manufacturer shall maintain operating documents that accurately reflect the manufacturer's standard operating procedures. Unless otherwise noted, a manufacturer shall make the operating documents available to the department upon request, through secure means.
- b. The operating documents of a manufacturer shall include all of the following:
 - (1) 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. A manufacturer may make operating documents for these procedures available on site only;
 - 3. The estimated types and amounts of all crop inputs used in the production of medical cannabidiol;
 - 4. The disposal methods for all waste materials;
 - 5. Employee training methods for the specific phases of production. A manufacturer may make operating documents for these procedures available on site only;
 - 6. Biosecurity measures and standard operating procedures used in the production and manufacturing of medical cannabidiol. A manufacturer may make operating documents for these procedures available on site only;
 - 7. Strategies for identifying and reconciling discrepancies in inventory of plant material or medical cannabidiol;
 - 8. Sampling strategy and quality testing for labeling purposes. A manufacturer may make operating documents for these procedures available on site only;
 - 9. Medical cannabidiol packaging and labeling procedures;
 - 10. Procedures for recall of medical cannabidiol;
 - 11. Plans for responding to a security breach at a manufacturing facility or while medical cannabidiol is in transit to a dispensary. A manufacturer may make operating documents for these procedures available on site only;
 - 12. A business continuity plan. A manufacturer may make this operating document available on site only;
 - 13. Records relating to all transport activities; and

14. Other information requested by the department.
- (2) Procedures to ensure accurate recordkeeping.
- (3) 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. A manufacturer may make operating documents for these procedures available on site only.

154.26(2) Prohibited activities. In addition to following all provisions of Iowa Code section 124E.7, a manufacturer shall not:

- a. Produce or manufacture medical cannabidiol in any location except in those areas approved by the department;
- b. Sell, deliver, transport, or distribute medical cannabidiol from any location except its manufacturing facility or a dispensary facility;
- c. Produce or manufacture medical cannabidiol in Iowa for sales or distribution outside of Iowa;
- d. Sell or distribute medical cannabidiol to any person or business other than a dispensary or manufacturer licensed by the department under Iowa Code chapter 124E;
- e. 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;
- f. Transport or deliver medical cannabidiol to any location except as allowed in subrule 154.22(1);
- g. Introduce synthetic or semisynthetic cannabinoids derived from hemp into medical cannabidiol products;
- h. Produce synthetic or semisynthetic cannabinoids within the licensed manufacturing facility.

641—154.27(124E) Recordkeeping requirements.

154.27(1) Manufacturer 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.

154.27(2) Manufacturer operations and inventory reporting other records.

a. A manufacturer or dispensary shall maintain the following for at least five years, unless otherwise noted, 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) Transportation manifests and incident reports; and
- (4) Records of all samples sent to a testing laboratory and the quality assurance test results.

b. A manufacturer or dispensary shall maintain for at least one year and provide to the department upon request its controlled access system data and visitor manifests.

154.27(3) Manufacturer entry into the secure sales and tracking system.

a. A manufacturer or dispensary shall use the secure sales and inventory tracking system to maintain the following:

- (1) Batch and harvest records;
- (2) Crop input and additive records;
- (3) Extraction and production records;
- (4) Transportation records;
- (5) Inventory records;
- (6) Solvent and processing chemical records; and
- (7) Other records as determined by the department.

b. Unless otherwise provided in these rules, a manufacturer shall adhere to the following schedule for entering data into the secure sales and inventory tracking system. A manufacturer shall enter data in real time for data related to:

- (1) Transport of medical cannabidiol, plant material, and laboratory samples;
- (2) Sales of medical cannabidiol to dispensaries;
- (3) The creation of process lots containing a unique identifier; and
- (4) The creation of package lots containing a unique identifier.

c. A manufacturer shall enter inventory reports on key inventory events into the secure sales and inventory tracking system within five business days in which the event occurred. These inventory reports include, but are not limited to:

- (1) Batch reports;
- (2) Crop input and additive reports;
- (3) Harvest reports;
- (4) Extraction reports;
- (5) Solvent and processing chemical reports;
- (6) Package lot reports;
- (7) Certificates of Analysis from a laboratory;
- (8) Other records as determined by the department.

d. State of Iowa Manufacturer API guide. The department shall maintain a document describing the IT requirements and acceptance criteria for reporting information to the secure sales and inventory tracking system. The department shall provide manufacturers no less than 14 days in which to comment on proposed revisions to the document, and the department shall provide no less than 30 days' notice before a revision takes effect. The document shall include:

- (1) The schedule and means of data reporting;
- (2) Integration requirements for third party vendors; and
- (3) Be available on the department's website (hhs.iowa.gov).

641—154.28(124E) Recall of medical cannabidiol products. Medical cannabidiol products may be recalled in the following ways:

154.28(1) Voluntarily by a licensed manufacturer.

154.28(2) By the department. If the department determines, based on an evaluation, that there is a reasonable probability that use of, or exposure to, a violative medical cannabidiol product will cause a serious adverse health consequence or death, the department may require a manufacturer to recall such violative medical cannabidiol products from dispensaries. An evaluation of the health hazard presented by medical cannabidiol being considered for recall shall be conducted by an ad hoc committee of scientists appointed by the department and shall consider, but need not be limited to, each of the following factors:

- a. Whether any disease or injuries have already occurred from the product.
- b. Whether any existing conditions could contribute to a clinical situation that could expose humans to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.
- c. A holistic assessment of the hazard and its present and future potential consequences.

641—154.29(124E) Quality assurance and control.

154.29(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 stability studies, and the presence of inactive ingredients and contaminants. A manufacturer shall use these testing results to determine appropriate storage conditions and product expiration dates.

154.29(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;
- e. Retain the results from the random samples for at least five years; and
- f. Notify the department at least two business days prior to sample collection and allow the department or its designees to be present to observe the sampling procedures when the samples are to be sent to a laboratory for testing.

154.29(3) *Sampling and testing.* A manufacturer shall:

- a. Work with the department and laboratory personnel to develop acceptance criteria for contaminants, including, but not limited to, cannabinoid content, metals, microbiological impurities, solvents, or other contaminants that the manufacturer uses in cultivating and producing medical cannabidiol;
- b. Conduct sampling and testing of plant material and medical cannabidiol lots using acceptance criteria that are protective of patient health. sampling methods results shall be approved by the department and laboratory personnel and shall ensure that lots of medical cannabidiol are homogenous and representative of the process or package lot.
- c. Reject and destroy medical cannabidiol from a lot that fails to meet established standards, and any other relevant quality control criteria when remixing and retesting are not warranted;
- d. Develop and follow a written procedure for responding to results failing to meet established standards, and any other relevant quality control criteria, including:
 - (1) Criteria for when remixing and retesting are warranted;
 - (2) Instructions for destroying contaminated or substandard medical cannabidiol when remixing and retesting are not warranted; and
 - (3) Instructions for determining the source of contamination;
- e. Retain documentation of test results, assessment, and destruction of medical cannabidiol for at least five years.

154.29(4) *Stability testing.*

- a. The quality assurance program shall include procedures for performing stability testing of each product type produced to determine product expiration dates. The procedures shall describe:
 - (1) Sample size and test intervals based on departmental guidance pursuant to subrule 154.47(1);
 - (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 product-expiration-date studies have not been completed a manufacturer shall assign a tentative product expiration date, not to exceed one year, based on any available stability information.
- d. If a manufacturer determines a product expiration date beyond one year, a manufacturer shall submit justification to the department, and receive approval, prior to labeling a product with an expiration date beyond one year.

154.29(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 from the date of manufacture.

c. After one year from the date of manufacture, reserve samples shall be destroyed.

154.29(6) Retesting. If the department deems that public health may be at risk, the department may require the manufacturer to retest any sample of medical cannabidiol.

154.29(7) Disposal of substandard product. A manufacturer shall dispose of all medical cannabidiol when samples fail to meet established standards, and other relevant quality control criteria.

154.29(8) Recall procedures. Each manufacturer shall establish a procedure for recalling product from the market 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 necessary;

b. Manufacturer's personnel who are responsible for overseeing the recall; and

c. How to notify affected parties of a recall.

641—154.30(124E) Packaging and labeling.

154.30(1) 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.

154.30(2) Medical cannabidiol packaging.

a. Requirements of medical cannabidiol package containers. The manufacturer shall use medical containers that are:

(1) Of sufficient size to accommodate a separate dispensary label containing the information described in paragraph 154.30(2) "c";

(2) Designed to maximize the shelf life of the contained medical cannabidiol;

(3) Tamper-evident; and

(4) Child-resistant.

b. Medical cannabidiol package prohibitions. The packaging for medical cannabidiol shall not:

(1) Bear a reasonable resemblance to commonly available nonmedical commercial products;

(2) Depict images other than the manufacturer's business name or logo on the packaging;

(3) Reasonably appeal to children. More information is provided in rule 641—154.22(2);

(4) Reasonably appeal to recreational or adult use; or

(5) Depict images other than the manufacturer's business name or logo on the packaging.

c. Requirements of medical cannabidiol packaging. A manufacturer shall ensure that all medical cannabidiol packaging includes the following information:

(1) The name of the manufacturer, and trade name if applicable;

(2) A label claim concentration for cannabinoid content including:

1. Tetrahydrocannabinol,

2. Tetrahydrocannabinolic acid; concentrations of tetrahydrocannabinolic acid may be omitted if the manufacturer uses decarboxylation or other means to substantially remove the acids from the product prior to testing;

3. Cannabidiol; and

4. Cannabidiolic acid; concentrations of cannabidiolic acid may be omitted if the manufacturer uses decarboxylation or other means to substantially remove the acids from the product prior to testing;

(3) The number of servings per package;

(4) The directions for use of the product, including recommended and maximum amount by age and weight, if applicable;

(5) All ingredients of the product shown with common or usual names, including but not limited to, any additives, terpenes or artificial flavors, diluents and carriers, and preservatives, listed in descending order by predominance of weight. Any third-party hemp-derived cannabinoids into medical cannabidiol products shall be specifically indicated on the ingredients list, separately from medical cannabidiol produced within the manufacturer's facility;

(6) Instructions for storage, including light and temperature requirements, if any; and

(7) The universal warning symbol provided by the department.

d. The following information shall be included with medical cannabidiol packaging, or contained within a package insert:

(1) 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.";

(2) 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.";

(3) A package may contain multiple labels if the information required by this rule is not obstructed.

154.30(3) Medical cannabidiol labeling.

a. After receiving a passing certification of analysis for a package lot from a laboratory, and prior to distribution to dispensaries, a manufacturer shall affix a label to each individual package of medical cannabidiol containing that contains following information:

(1) A unique lot number;

(2) The date of manufacture;

(3) Product expiration date. This date shall be one year from the date of manufacture unless a manufacturer has conducted stability studies, and received approval from the department for an extended expiration date.

b. Cannabinoid content for:

(1) Tetrahydrocannabinol;

(2) Tetrahydrocannabinolic acid, concentrations of tetrahydrocannabinolic acid may be omitted if the manufacturer uses chemical decarboxylation or other means to substantially remove the acids from the product prior to testing;

(3) Cannabidiol; and

(4) Cannabidiolic acid.

641—154.31(124E) Transportation of medical cannabidiol and plant material.

154.31(1) Transport of medical cannabidiol or plant material. A manufacturer is authorized to transport medical cannabidiol or plant material to and from:

a. Dispensaries;

b. A laboratory for testing;

c. A waste facility for disposal;

d. A manufacturer licensed by the department under Iowa Code chapter 124E;

e. Other sites only with departmental approval.

154.31(2) 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 unique ID of each individual process lot or package lot 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
 - (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, manufacturer, or waste facility, as applicable, of the expected arrival time and transmit a copy of the manifest to the dispensary, laboratory, manufacturer, 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, manufacturer, or waste facility.
- d.* An authorized employee at the dispensary, laboratory, manufacturer, 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, manufacturer, 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.

154.31(3) *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.* When the motor vehicle contains medical cannabidiol, manufacturer employees who are transporting the 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; and
 3. The location of the stop.
- 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 nonemergency 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.* An employee in a transport motor vehicle shall have telephone access with the manufacturer's personnel.

641—154.32(124E) Disposal of medical cannabidiol and plant material.

154.32(1) *Return of medical cannabidiol from dispensaries and laboratory.* A manufacturer may collect at no charge medical cannabidiol waste from dispensaries. A manufacturer who chooses to collect medical cannabidiol waste may use it for research and development or retained samples, but

the manufacturer shall not introduce medical cannabidiol returned from laboratory into lots of products intended for sale. Notwithstanding this provision, a manufacturer shall:

- a. Dispose of medical cannabidiol waste; and
- b. Maintain a written record of disposal.

154.32(2) *Medical cannabidiol and plant material waste.* A manufacturer shall store, secure, manage, and record 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 and plant material waste at an approved facility.
- b. Before transport of plant material waste, the manufacturer shall render the plant material waste unusable and unrecognizable.
- c. 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 applicable regulations.

641—154.33(124E) Production requirements.

154.33(1) *Cultivation and processing.*

- a. All phases of production shall take place in designated, restricted access areas in accordance with rule 641—154.21(124E).
- b. The production process shall be designed to limit contamination.
- c. Each production area shall allow for access, observation, and inventory of each plant group.

154.33(2) *Crop inputs and plant batches.*

- a. The manufacturer shall use the secure sales and inventory tracking system to maintain an electronic record of all crop inputs. 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 plants that received the application; and
 - (5) A copy of or electronic link to the safety data sheet for the crop input applied.
- b. At the time of harvesting, 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. Each batch or part of a batch of cannabis plants that contributes to a lot of medical cannabidiol shall be recorded in the secure sales and inventory tracking system or other manifest system.

154.33(3) *Production of medical cannabidiol.*

- a. A manufacturer shall obtain approval from the department for use of any hydrocarbon-based extraction process.
- b. Medical cannabidiol shall be prepared, handled, and stored in compliance with the sanitation requirements in this rule.
- c. A manufacturer shall produce shelf-stable, nonperishable forms of medical cannabidiol.
- d. A manufacturer shall ensure that the cannabinoid content of the medical cannabidiol it produces is homogenous.
- e. Each lot of medical cannabidiol shall be assigned a unique lot number and recorded in the secure sales and inventory tracking system or other manifest system.

154.33(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. Employees have accessible toilet facilities that are sanitary and in good repair; and

m. Plant material and medical cannabidiol that could support the rapid growth of undesirable microorganisms are isolated to prevent the growth of those microorganisms.

154.33(5) Storage.

a. A manufacturer shall store plant material and medical cannabidiol during production, transport, and testing, ensuring that:

(1) Plant material and medical cannabidiol are returned to a secure location immediately after completion; and

(2) The tanks, vessels, bins, or bulk containers containing plant material or medical cannabidiol are locked inside a secure area.

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, at all times, a manufacturer shall store all plant material and 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.

154.33(6) Scales. All scales used to weigh usable plant material for purposes of these rules shall be certified in accordance with ISO/IEC 17025 dated 2017, which is incorporated herein by reference.

641—154.34(124E) Supply and inventory.

154.34(1) Reliable and ongoing supply. A manufacturer shall provide a reliable and ongoing supply of medical cannabidiol to medical cannabidiol dispensaries.

154.34(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.

154.34(3) *Inventory tracking required.* A manufacturer shall use the secure sales and inventory tracking system to track medical cannabidiol production from seed or plant cutting through distribution of medical cannabidiol to a dispensary.

154.34(4) *Reconciliation.* No less often than every two calendar weeks, a manufacturer shall reconcile its physical inventory with the inventory recorded in the secure sales and inventory tracking system.

a. Reconciliation shall include:

- (1) Plant material at the manufacturing facility and in transit; and
- (2) Medical cannabidiol at the manufacturing facility.

b. Discrepancies between the physical inventory of the manufacturer and the inventory recorded in the secure sales and inventory system shall be handled as follows:

(1) A manufacturer shall report suspected diversion of medical cannabidiol to the department within 72 hours of discovery.

(2) A manufacturer shall have up to 72 hours to reconcile discrepancies in the manufacturer's physical inventory with the inventory recorded in the secure sales and inventory tracking.

DISPENSING

641—154.35(124E) Duties of the department.

154.35(1) *Inspection of dispensaries.* The department or its agents shall conduct regular inspections of dispensaries and their facilities.

154.35(2) *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;

c. Total tetrahydrocannabinol purchased in the last 90 days by a patient and the patient's primary caregiver.

154.35(3) *Recall of medical cannabidiol products.* If the department determines, based on an evaluation of the health hazard presented, that there is a reasonable probability that use of, or exposure to, a violative medical cannabidiol product will cause a serious adverse health consequence or death, the department may require a dispensary to recall such violative medical cannabidiol products from the dispensary facility and from patients. An evaluation of the health hazard presented by medical cannabidiol being considered for recall shall be conducted by an ad hoc committee of scientists appointed by the director of the department and shall consider, but need not be limited to, each of the following factors:

a. Whether any disease or injuries have already occurred from the product.

b. Whether any existing conditions could contribute to a clinical situation that could expose humans to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.

c. A holistic assessment of the hazard and its present and future potential consequences.

154.35(4) *Permissible disclosure.* The department may disclose patient-specific dispensing data to the certifying provider upon written request by the patient, caregiver, or certifying provider.

641—154.36(124E) Dispensary operations.

154.36(1) *Operating documents.*

a. A dispensary shall maintain operating documents that accurately reflect the dispensary's standard operating procedures. Unless otherwise noted, a dispensary shall make the operating documents available to the department upon request, through secure means.

b. The operating documents of a dispensary shall include all of the following:

(1) 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. Procedures to ensure the dispensary does not dispense more than a patient's certified limit of total tetrahydrocannabinol to a patient and the patient's primary caregiver(s) in a 90-day period;
7. Medical cannabidiol labeling procedures;
8. Procedures for recall of medical cannabidiol;
9. Plans for responding to a security breach at the dispensary facility;
10. A business continuity plan; and
11. Other information requested by the department.

(2) Procedures to ensure accurate recordkeeping.

(3) 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.

154.36(2) Prohibited activities. In addition to following all provisions of Iowa Code section 124E.7, a dispensary shall not:

- a. Dispense medical cannabidiol in any location except in those areas approved by the department;
- b. Sell, receive, transport, or distribute medical cannabidiol from any location except its dispensary;
- c. Sell, receive, or distribute medical cannabidiol from any entity other than a manufacturer licensed by the department;
- d. Sell or distribute medical cannabidiol to any person other than an approved patient or primary caregiver;
 - (1) Transport or deliver medical cannabidiol to any location, unless approved by the department;
 - (2) Sell medical cannabidiol that is not packaged and labeled in accordance with rules;
 - (3) Repackage medical cannabidiol or remove the manufacturer's label.

641—154.37(124E) Recordkeeping requirements.

154.37(1) Dispensary sales. Within one business day of sale, a dispensary shall record complete and accurate electronic sales transaction records in the 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 and time 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.

154.37(2) Reserved.

641—154.38(124E) Storage.

154.38(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.

154.38(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.

641—154.39(124E) Dispensing.

154.39(1) *Access to all forms of product.* A dispensary shall provide access to all medical cannabidiol forms produced by each licensed manufacturer.

154.39(2) *Dispensing to a patient or primary caregiver.* Prior to dispensing any medical cannabidiol to a patient, a dispensary shall do all of the following:

a. Verify the patient or primary caregiver's identity using acceptable photo identification and is over 18 years of age. Acceptable photo identification includes:

- (1) A valid Iowa driver's license;
- (2) A valid Iowa nonoperator's identification card;
- (3) A U.S. passport;
- (4) A U.S. military ID or veteran ID;
- (5) A tribal ID card/document;

b. Verify that the patient and primary caregiver, if applicable, is registered and listed in the secure sales and inventory tracking system and has a valid medical registration card;

c. Check the secure sales and inventory tracking system for the patient's total tetrahydrocannabinol 90-day purchase limit and the amount of total tetrahydrocannabinol that the patient and the patient's primary caregiver(s) have purchased on behalf of the patient in the past 90 days to ensure that the amount of total tetrahydrocannabinol sold by the dispensary to the patient does not exceed the patient's purchase limit;

d. Assign a tracking number to any medical cannabidiol that is to be dispensed to the patient or primary caregiver;

e. Issue a label that contains the following information, which may be printed on a secondary label or package insert:

- (1) The medical cannabidiol tracking number;
- (2) The patient registration number;
- (3) The date and time the medical cannabidiol is dispensed;
- (4) The name and address of the dispensary; and
- (5) Any specific instructions for use based upon manufacturer guidelines or department rules.

Text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

641—154.40(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—154.41(124E) Disposal of medical cannabidiol.

154.41(1) *Identification of excess, expired, or damaged medical cannabidiol.* Dispensaries shall identify unused, excess, expired, or damaged medical cannabidiol.

154.41(2) *Return of medical cannabidiol from a patient or primary caregiver to a dispensary.*

a. A dispensary shall accept at no charge medical cannabidiol waste from any patient or primary caregiver. A dispensary may provide all medical cannabidiol waste to the manufacturer for disposal.

b. The dispensary shall enter the following information into the secure sales and inventory tracking system for medical cannabidiol returned from a patient or primary caregiver being returned to the manufacturer:

- (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;
- (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.

154.41(3) *Unused, excess, expired, damaged, or returned medical cannabidiol.* Unused, excess, expired, damaged, or returned medical cannabidiol shall be stored as described in subrule 154.38(2).

154.41(4) *Return of medical cannabidiol to a manufacturer.* A dispensary shall record information on all medical cannabidiol collected by the manufacturer in the secure sales and inventory tracking system. Information shall include:

- a. The date the medical cannabidiol was collected by the manufacturer;
- b. The quantity of medical cannabidiol collected; and
- c. The type and lot number of medical cannabidiol collected.

641—154.42(124E) Inventory.

154.42(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.

154.42(2) *Real-time inventory required.* A dispensary shall use the 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.

154.42(3) *Reconciliation.* At least once a calendar week, a dispensary shall reconcile all medical cannabidiol with the inventory recorded in the secure sales and inventory tracking system. Discrepancies shall be handled as follows:

- a. A dispensary shall report suspected diversion of medical cannabidiol to the department and law enforcement within 24 hours of discovery.
- b. A dispensary shall have up to 24 hours to reconcile the dispensary's physical inventory with the inventory recorded in the secure sales and inventory tracking system. If the dispensary cannot reconcile the dispensary's physical inventory with the secure sales and inventory tracking system's inventory within 24 hours but diversion of product is not suspected, the dispensary shall immediately contact the department to report the discrepancy and to initiate a compliance action.

641—154.43(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.

MEDICAL CANNABIDIOL BOARD

641—154.44(124E) Purpose and duties of board. The purpose of the board is to administer the provisions of Iowa Code section 124E.5.

641—154.45(124E) Organization of board and proceedings.

154.45(1) *Membership.* The board shall be composed of members as set forth in Iowa Code section 124E.5. 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.

154.45(2) *Vacancies.* Vacancies shall be filled in the same manner in which the original appointments were made for the balance of the unexpired term.

154.45(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.

154.45(4) *Board meetings.*

a. Board meetings shall be conducted in accordance with the open meetings requirements of Iowa Code chapter 21.

b. The department's Bureau of Cannabis Regulation shall schedule the time, date and location of meetings.

c. A majority of the members shall constitute a quorum for conducting business of the board.

d. An affirmative vote of a majority of the board members present at a meeting is required for a motion to pass.

154.45(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.

154.45(6) *Subcommittees.* The board may designate one or more subcommittees to perform such duties as may be deemed necessary.

641—154.46(124E) *Petitions for the addition or removal of medical conditions, medical treatments or debilitating diseases.* Pursuant to Iowa Code section 124E.5(3) "a," the board shall accept and review petitions to modify the list of debilitating medical conditions for the medical use of cannabidiol. The petition shall be in accordance with 441—Chapter 4, except that the caption should read "Petition for Addition or Removal."

154.46(1) *Inquiries.* Inquiries concerning the status of a petition may be made to the bureau of cannabis regulation at the department's address.

154.46(2) *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.

154.46(3) *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.

154.46(4) *Board response.* The board shall notify the petitioner in writing of the decision within six months after the filing, unless the petitioner agrees to a time extension. If the petition is granted, the board will recommend addition or removal of the medical condition, medical treatment or debilitating disease to the board of medicine. If the petition is denied the board will provide the rationale for the denial. Notification occurs when the board mails the writing to the petitioner.

154.46(5) *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.

LABORATORY TESTING

641—154.47(124E) *Requirements of the department.*

154.47(1) *Laboratory testing requirements and acceptance criteria.* The department shall work with manufacturers and laboratories to create and maintain a document describing required sampling methodology, acceptance criteria, stability-testing procedures, and other guidance for manufacturers

and laboratories on testing procedures. The department shall provide manufacturers and laboratories no less than 14 days in which to comment on proposed revisions to the document, and the department shall provide no less than 30 days' notice before a revision takes effect. The document shall:

- a. Describe the minimum number of sample units and reserve samples required for testing by the laboratory;
- b. Describe an option for manufacturers to reduce the amount of testing conducted by allowing compositing of sample units or other techniques that reduce the number of tests required without compromising the safety of the products once a manufacturer has satisfactorily completed a control study for a specific extraction or production process;
- c. Describe the minimum requirements for sample size and testing intervals for stability testing;
- d. Be available on the department's website (hhs.iowa.gov).

154.47(2) *Review and approval of manufacturer sampling protocols.* The department shall have two weeks to review and approve or request revisions to a manufacturer's sampling protocols.

154.47(3) *Review and approval of manufacturer stability-testing procedures.* The department shall have two weeks to review and approve or request revisions to a manufacturer's stability-testing procedures.

154.47(4) *Establish a laboratory review committee.* The department shall establish a laboratory review committee to assist with the review of applications by laboratories and the establishment of accepted laboratory testing standards and practices.

154.47(5) *Review of laboratory applications.* The department shall establish a process to review applications from prospective medical cannabidiol testing laboratories. Prospective laboratories shall apply on a form created by the department. The department will determine whether the laboratory meets the criteria for an independent medical cannabidiol testing facility as set forth in the definition of "laboratory" in Iowa Code section 124E.2 in addition to determining whether the laboratory meets laboratory requirements pursuant to these rules.

154.47(6) *Regulation of independent laboratories.* The department shall determine on an annual basis whether any approved independent laboratory continues to meet the application criteria of this rule. The department shall establish a process for the annual review of approved independent laboratories. An independent laboratory 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.

641—154.48(124E) Requirements of a laboratory.

154.48(1) *Minimum testing requirements.* A laboratory shall establish and implement test methods, corresponding standard operating procedures for the analyses of cannabinoids, residual solvents and processing chemicals, pesticides, microbiological impurities, and metals and other analyses as requested by the department.

154.48(2) *Level of quantitation.* A laboratory shall be able to demonstrate that its level of quantitation (LOQ) is below any action level established by the department.

154.48(3) *Inventory tracking.* A laboratory shall record the following:

- a. The receipt of medical cannabidiol from a manufacturer for testing.
- b. The return of medical cannabidiol or waste to a manufacturer.

154.48(4) *Hazardous waste disposal.* A laboratory shall do the following when dealing with hazardous waste:

- a. Discard hazardous waste, including hazardous waste containing medical cannabis goods, in accordance with federal and state hazardous waste laws.
- b. Document the waste disposal procedures followed for each sample.

641—154.49(124E) Requirements of a manufacturer.

154.49(1) *Assuming costs.* A manufacturer shall assume the costs for all laboratory testing pertaining to verification studies on new products, the cost of standard testing protocols as outlined in a Laboratory

Acceptance and Criteria Document and other tests as requested by the department. A manufacturer shall provide any necessary reference materials to the laboratory at no cost.

154.49(2) *Obtaining approval for sampling protocols.* A manufacturer shall obtain approval from the department for the manufacturer's sampling protocols prior to submitting samples for laboratory testing related to content and contamination.

154.49(3) *Obtaining approval for stability-testing procedures.* A manufacturer shall obtain approval from the department for the manufacturer's stability-testing procedures prior to submitting samples for laboratory testing related to stability testing and product-expiration-date studies.

641—154.50(124E) Content testing.

154.50(1) *Cannabinoids.*

a. For each unique lot of medical cannabidiol, and if asked to do so by a requester for other medical cannabis goods, a laboratory shall, at minimum, test for and report measurements for the following cannabinoid analytes:

- (1) THC;
- (2) THCA;
- (3) CBD; and
- (4) CBDA.

b. A laboratory shall report that the primary sample passed or failed THC and CBD potency testing according to guidance in the laboratory testing requirements and acceptance criteria document described in subrule 154.47(1).

c. For each cannabinoid analyte test, a laboratory shall issue a certificate of analysis that contains the following:

(1) Concentrations of cannabinoid analytes in mg/ml for liquids and mg/g for solids, or other measures approved by the department.

(2) Whether the primary sample passed or failed the test in accordance with paragraph 154.50(1)“*b.*”

d. The laboratory may test for and provide test results for additional cannabinoid analytes if asked to do so by a requester.

154.50(2) *Contaminants testing.*

a. For each unique lot of medical cannabidiol, unless otherwise referenced in the laboratory testing requirements and acceptance criteria document described in subrule 154.47(1), a laboratory shall conduct contaminants testing, for the following analytes:

- (1) Residual solvents and processing chemicals.
- (2) Pesticides.
- (3) Microbiological impurities.
- (4) Heavy metals.

b. The laboratory may test and provide test results for additional contaminants if asked to do so by a requestor.

c. The department shall provide a list of contaminants for which primary samples are to be tested with corresponding action levels on the department's website (hhs.iowa.gov).

d. For each contaminant for which a laboratory tests, the laboratory shall report that the primary sample passed the testing if the concentration of contaminant is at or below the action level approved by the department.

e. For each contaminant for which a laboratory tests, the laboratory shall report that the primary sample failed the testing if the concentration of contaminants is above the action level approved by the department.

f. If a laboratory is using GC-mass spectrometry instrumentation to analyze primary samples for contaminants and the laboratory determines that a primary sample contains contaminants or chemical analytes that are not included in the department-approved list of required tests, the laboratory shall attempt to achieve tentative identification and semiquantitative results of the contaminants analytes.

g. The laboratory may test for and provide test results for additional contaminants or processing chemicals if asked to do so by a requester.

h. For each primary sample tested, a laboratory shall issue a certificate of analysis that contains the following:

(1) The name and concentration of each contaminant for which the primary sample was tested.

1. The concentrations shall be listed in parts per million (ppm) or other units as determined by the department.

2. The laboratory shall report a result of “detected but not quantified” for any contaminant that falls below the LOQ, has a signal-to-noise ratio of greater than 3:1, and meets identification criteria.

(2) Whether the primary sample passed or failed the test in accordance with paragraphs 154.50(2) “c” and “d.”

(3) The names and amounts of any additional contaminants identified by the laboratory.

i. If the primary sample fails testing for residual solvents and processing chemicals, the lot fails laboratory testing.

j. When a laboratory identifies additional contaminants in a primary sample, the laboratory shall:

(1) Notify the department of the additional contaminants and the amounts detected, if applicable.

(2) Refrain from issuing a final certificate of analysis until given approval to do so by the department.

641—154.51(124E) Reporting requirements.

154.51(1) Reporting test results. The laboratory shall generate a certificate of analysis for each primary sample that it tests and make the certificate of analysis available to the manufacturer and the department.

154.51(2) Tentatively identified analytes. A laboratory shall report on the certificate of analysis any tentatively identified analytes detected during the analysis of the primary sample. When a laboratory identifies additional analytes in a primary sample, the laboratory shall:

a. Notify the department of the additional analytes detected.

b. Refrain from issuing a final certificate of analysis until given approval to do so by the department.

154.51(3) Additional reporting requirements. In addition to the requirements described in rule 641—154.50(124E), the certificate of analysis shall contain, at a minimum, the following information:

a. All requirements of ISO/IEC 17025 dated 2017;

b. Date of primary sample collection;

c. Date the primary sample was received by the laboratory;

d. Date of each analysis;

e. The LOQ and action level for each analyte, as applicable;

f. Whether the primary sample and lot passed or failed laboratory testing; and

g. A signature by the laboratory quality officer or delegate and the date the certificate of analysis was validated as being accurate by the laboratory quality officer or delegate.

154.51(4) Measurements.

a. Any test result that is not covered under the laboratory’s ISO/IEC 17025 scope of accreditation shall be clearly identified on the certificate of analysis.

b. Measurements below a method’s limit of detection shall be reported as “<” (less than) or “not detected” and reference the reportable limit. The reporting of zero concentration is not permitted.

c. Measurements greater than or equal to LOD but less than LOQ shall be reported as “detected but not quantified.”

d. The number of significant figures reported shall reflect the precision of the analysis.

641—154.52(124E) Recordkeeping requirements.

154.52(1) Data package. A laboratory shall create a data package for each analytical batch of primary samples that the laboratory analyzes. The data package shall contain at minimum the following information:

- a. The name and address of the laboratory that performed the analytical procedures;
- b. The names, functions, and signatures (electronic or handwritten) of the laboratory personnel that performed the primary sample preparation, analyzed the primary samples, and reviewed and approved the data;
- c. All primary sample and analytical batch quality control sample results;
- d. Raw data for each primary sample analyzed;
- e. Instrument raw data, if any was produced;
- f. Instrument test method with parameters;
- g. Instrument tune report, if one was created;
- h. All instrument standard calibration data;
- i. Test-method worksheets or forms used for primary sample identification, characterization, and calculations, including chromatograms, sample-preparation worksheets, and final datasheets;
- j. The quality control report with worksheets, forms, or copies of laboratory notebook pages containing pertinent information related to the identification and traceability of all reagents, reference materials, and standards used for analysis;
- k. The analytical batch sample sequence;
- l. The field sample log; and
- m. The chain-of-custody form.

154.52(2) Review of data package. After the laboratory has compiled a data package, an individual at the laboratory who was not previously involved in the creation of the data package shall:

- a. Assess the analytical results for technical correctness and completeness;
- b. Verify that the results of each analysis carried out by the laboratory are reported accurately, clearly, unambiguously, and objectively;
- c. Verify that the measurements can be traced back; and
- d. Approve the measurement results by signing and dating the data package prior to release of the certificate of analysis by the laboratory.

154.52(3) Data package record retention. The entire data package shall be stored by a laboratory for a minimum of five years and shall be made available upon request by the department or the requester of the laboratory testing.

154.52(4) Other records. A laboratory shall maintain all documents, forms, records, and standard operating procedures associated with the testing of medical cannabidiol.

a. A laboratory shall maintain analytical testing laboratory records in such a manner that the analyst, the date the analysis was performed, the approver of the certificate of analysis, the reviewer and approver of the data package, the test method, and the materials that were used can be determined by the department.

b. Records shall be stored in such a way that the data may be readily retrieved when requested by the department.

c. All testing laboratory records shall be kept for a minimum of five years, unless otherwise noted in these rules.

d. The department shall be allowed access to all electronic data, including standards records, calibration records, extraction logs, and laboratory notebooks.

e. A laboratory shall keep and make available to the department the following records related to the testing of medical cannabidiol:

(1) Personnel qualification, training, and competency documentation, including but not limited to résumés, training records, continuing education records, analytical proficiency testing records, and demonstration of competency records for laboratory work. These records shall be kept current.

(2) Method verification and validation records, including method modification records, method detection limit and quantitation limit determination records, ongoing verification records such as proficiency test records and reference material analysis records.

(3) Quality control and quality assurance records, including the laboratory's quality assurance manual and control charts with control limits.

(4) Chain-of-custody records, including chain-of-custody forms, field sample logs, sample-receipt records, sample-description records, sample-rejection records, laboratory information management system records, sample-storage records, sample-retention records, and disposal records.

(5) Purchasing and supply records, equipment-services records, and other equipment records, including purchase requisition records, packing slips, supplier records, and certificates of analysis.

(6) Laboratory equipment installation records, maintenance records, and calibration records. These records shall include the date and name of the person performing the installation of, calibration of, or maintenance on the equipment, with a description of the work performed, maintenance logs, pipette calibration records, balance calibration records, working and reference mass calibration records, and daily verification-of-calibration records.

(7) Customer service records, including customer contracts, customer requests, certificates of analysis, customer transactions, customer feedback, records related to the handling of complaints and nonconformities, and corrective action pertaining to complaints.

(8) Nonconforming work and corrective action records, including corrective action, nonconformance, nonconformities resolved by correction, customer notification of nonconformities, internal investigations, implementation of corrective action, and resumption-of-work records.

(9) Internal-audit and external-audit records, including audit checklists, standard operating procedures, and audit observation and findings reports. These records shall include the date and name of the person performing the audit.

(10) Management review records, including technical data review reports and final management-review reports. These records shall include the review date and the name of the reviewer.

(11) Laboratory data reports, data review, and data approval records, including instrument and equipment identification records, records with unique sample identifiers, analysts' laboratory notebooks and logbooks, traceability records, test-method worksheets and forms, instrumentation-calibration data, and test-method raw data. These records shall include the analysis date and the name of the analyst.

(12) Proficiency testing records, including the proficiency test schedule, proficiency tests, data-review records, data-reporting records, nonconforming work and corrective actions, and quality control and quality assurance records related to proficiency testing.

(13) Electronic data, backed-up data, records regarding the protection of data, including unprocessed instrument output data files and processed quantitation output files, electronic data protocols and records, and authorized personnel records.

(14) Security data, including laboratory-security records and laboratory-access records, surveillance-equipment records, and security-equipment records. These records shall be stored for at least one year.

(15) Traceability, raw data, standards records, calibration records, extraction logs, reference materials records, analysts' laboratory notebooks and logbooks, supplier records, and certificates of analysis, and all other data-related records.

(16) Laboratory contamination and cleaning records, including autoclave records, acid-wash logs and records, and general laboratory-safety and chemical-hygiene protocols.

641—154.53(124E) Quality control. The laboratory shall have quality control protocols that include the following elements:

154.53(1) *Quality control samples required.*

a. The laboratory shall run quality control samples with every analytical batch of samples for chemical and microbiological analysis.

b. For microbiological analysis, the laboratory shall develop procedures for quality control requirements for each analytical batch of samples.

c. The laboratory shall analyze the quality control samples in exactly the same manner as the test samples to validate the laboratory testing results.

154.53(2) *Types of quality control samples.* At a minimum, a laboratory shall have the following quality control samples as part of every analytical batch tested for chemical analytes:

a. Negative control (method blank). A laboratory shall prepare and run at least one method blank sample with an analytical batch of samples along with and under the same conditions, including all sample preparation steps, as the other samples in the analytical batch, to demonstrate that the analytical process did not introduce contamination.

b. Positive control (laboratory control sample). A laboratory shall prepare and run at least one laboratory control sample with an analytical batch of samples along with and under the same conditions, including all sample preparation steps, as the other samples in the analytical batch.

c. Matrix spike sample. A laboratory shall prepare and run one or more matrix spike samples for each analytical batch.

(1) A laboratory shall calculate the percent recovery for quantitative chemical analysis by dividing the sample result by the expected result and multiplying that by 100. All quality control measures shall be assessed and evaluated on an ongoing basis, and quality control acceptance criteria shall be used. When necessary, the department may establish acceptance criteria on the department's website (hhs.iowa.gov).

(2) If quality control acceptance criteria are not acceptable, a laboratory shall investigate the cause, correct the problem, and rerun the analytical batch of samples. If the problem persists, the laboratory shall reprepare the samples and run the analysis again, if possible.

d. Field duplicate sample. A laboratory shall prepare and run a duplicate sample as described in the laboratory testing requirements and acceptance criteria document in subrule 154.47(1). The acceptance criterion between the primary sample and the duplicate sample is less than or equal to 20 percent relative percent difference.

154.53(3) *Certified reference material for chemical analysis.* The laboratory shall use a reference material for each analytical batch in accordance with the following standards:

a. The reference material should be certified and obtained from an outside source, if possible. If a reference material is not available from an outside source, the laboratory shall make its own in-house reference material.

b. Reference material made in-house should be made from a different source of standards than the source from which the calibration standards are made.

c. The test result for the reference material shall fall within the quality control acceptance criteria. If it does not, the laboratory shall document and correct the problem and run the analytical batch again.

154.53(4) *Calibration standards.* The laboratory shall prepare calibration standards by serially diluting a standard solution to produce working standards used for calibration of an instrument and quantitation of analyses in samples.

154.53(5) *Quality control-sample report.* A laboratory shall generate a quality control-sample report that includes quality control parameters and measurements, analysis date, and type of matrix.

154.53(6) *Limit-of-detection and limit-of-quantitation calculations.* For chemical method analysis, a laboratory shall calculate the limit of detection and limit of quantitation using generally accepted methodology.

641—154.54(124E) Security requirements.

154.54(1) *Security policy requirement.* A laboratory shall maintain a security policy to prevent the loss, theft, or diversion of medical cannabidiol samples. The security policy shall apply to all staff and visitors at a laboratory facility.

154.54(2) *Restricted access.* A laboratory shall limit entrance to all restricted areas by completing all of the following:

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 to and exit from the laboratory;

(4) Track times of personnel movement between restricted access areas;

(5) Store data for retrieval for a minimum of one year; and

(6) Remain operable in the event of a power failure.

b. A laboratory shall promptly, but no later than five business days after receipt of request, submit stored controlled access system data to the department.

154.54(3) Personnel identification system. A laboratory shall use a personnel identification system that controls and monitors individual employee access to restricted access areas within the laboratory facility.

a. 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 laboratory employee shall keep the identification card visible at all times when the employee is in the laboratory.

c. Upon termination or resignation of an employee, a laboratory shall immediately:

- (1) Revoke the employee's access to the laboratory; and
- (2) Obtain and destroy the employee's identification card, if possible.

154.54(4) Video monitoring and surveillance. A laboratory shall operate and maintain in good working order a video surveillance system for its premises that operates 24 hours per day, seven days a week, and visually records all areas where medical cannabis goods are stored or tested.

a. *Camera specifications.* Cameras shall:

- (1) Capture clear and certain identification of any person entering or exiting a restricted access area containing medical cannabis goods;
- (2) Produce a clear, color still photograph live or from a recording;
- (3) Have 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.

b. *Video recording specifications.* Video recording equipment shall:

- (1) Export still images in an industry standard image format, such as .jpg, .bmp, or .gif.
- (2) Archive in a format that ensures authentication and guarantees that the recorded image has not been altered.
- (3) Save 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.

c. *Additional requirements.* A laboratory shall maintain all security system equipment and recordings in a secure location to prevent theft, loss, destruction, corruption, and alterations.

d. *Retention.* A laboratory shall ensure that 24-hour recordings from all video cameras are:

- (1) Available for viewing by the department upon request;
- (2) Retained for a minimum of 60 days;
- (3) Maintained free of alteration or corruption; and
- (4) Retained longer, as needed, if a laboratory is given actual notice of a pending criminal, civil, or administrative investigation, or other legal proceeding for which the recording may contain relevant information.

154.54(5) Chain-of-custody policy and procedures. A laboratory shall maintain a current chain-of-custody policy and procedures. The policy should ensure that:

a. Chain of custody is maintained for samples which may have probable forensic evidentiary value; and

b. Annual training is available for individuals who will be involved with testing medical cannabis goods.

154.54(6) Information technology systems security. A laboratory shall maintain information technology systems protection by employing comprehensive security controls that include security

firewall protection, antivirus protection, network and desktop password protection, and security patch management procedures.

These rules are intended to implement Iowa Code chapter 124E.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 177
“Health Data”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 1996 Iowa Acts, chapter 1212, and Iowa Code section 135.166

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 135

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

Via video/conference call:
meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

This proposed rulemaking provides that hospitals must submit data to a selected contractor of HHS. The contractor serves as an intermediary of HHS and completes data collection, maintenance, and dissemination to HHS and on HHS’ behalf. It also allows HHS to charge fees for administrative costs related to providing data and requires data be kept confidential in compliance with state and federal law.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Individuals do not bear any cost of this rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
All Iowans will benefit since this is a complete dataset representative of all incidents requiring inpatient or outpatient care.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact associated with this chapter.
 - Qualitative description of impact:
Availability of data allows for evaluations and analyses of acute and chronic conditions to improve public health, improve the quality of health services in Iowa, and design public health programs and interventions. It also allows for data availability to provide aggregate and statistical data to partners and the public.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
No costs to the State are identified. Minimal personnel time is allocated to maintaining this dataset and all work fits into other duties as assigned.
 - Anticipated effect on state revenues:
No impact has been identified.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Nominal costs are absorbed into other duties as assigned, and less information would be available to quantify health-related needs of Iowans if this rulemaking did not exist.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
HHS is collecting health data in accordance with the requirements of the Iowa Code. A less costly method has not been identified to achieve the purpose of this rulemaking.
6. Alternative methods considered by the agency:
- Description of any alternative methods that were seriously considered by the agency:
HHS implements health data collection in accordance with the requirements of the Iowa Code and Iowa Acts.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
Identified alternatives have not been seriously considered because any alternatives are anticipated to require additional HHS resources for implementation.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 177 and adopt the following **new** chapter in lieu thereof:

CHAPTER 177 HEALTH DATA

641—177.1(76GA,ch1212) Definitions. For purposes of this chapter, the following definitions shall apply:

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record. Included in the definition are those data collected by the department, pursuant to 1996 Iowa Acts, chapter 1212, for preparation and dissemination as compilations.

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

641—177.2(76GA,ch1212) Description of data to be submitted.

177.2(1) The department shall collect information from other state agencies for the purpose of public dissemination of health data.

177.2(2) Hospitals shall submit data to the contractor selected through the request for proposal process, which shall serve as an intermediary for the department. The information shall include inpatient, outpatient and ambulatory information.

177.2(3) The contractor selected through the request for proposal process shall collect, maintain, and disseminate hospital inpatient, outpatient, and ambulatory information pursuant to a memorandum of understanding with the department. The contractor selected through the request for proposal process shall submit data to the department pursuant to the memorandum of understanding.

641—177.3(76GA,ch1212) Fees. An hourly fee may be charged for fulfilling a data request. The hourly fee shall not exceed the estimated hourly wage of the department employee fulfilling the data request.

641—177.4(76GA,ch1212) Patient confidentiality. The department shall protect patient confidentiality. Confidential records or parts of such records collected as a part of this process shall be kept confidential. All health data shall be collected, maintained, and disseminated only in accordance with Iowa and federal law.

These rules are intended to implement 1996 Iowa Acts, chapter 1212, section 5, and Iowa Code section 135.166.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 193
“Impaired Practitioner Review Committee”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C.3(1)“k”
State or federal law(s) implemented by the rulemaking: Iowa Code section 272C.3(1)“k”

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kane Young
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.724.3216
Email: kane.young@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of 641—Chapter 193, “Impaired Practitioner Review Committee,” and implements Iowa Code section 272C.3(1)“k” in accordance with the goals of Executive Order 10 (January 10, 2023). This proposed rulemaking explains the processes of the impaired practitioner review committee and how the committee supports the recovery or rehabilitation of licensees. The committee is composed of at least one practitioner licensed under the same or similar professional licensing board who has successfully completed a board-approved recovery program and board-ordered probation and remained free of addiction for at least two years; one practitioner with expertise in substance abuse disorder, dependency, or addiction treatment programs; and one member of the public. The goal of this composition is to ensure the committee is well-rounded and has expertise in addiction and recovery, in addition to having members with pertinent perspectives to balance the needs of the licensee with protection of the public. Because this program is confidential, and participation is not a matter of public record, specific eligibility criteria must be met to ensure that matters that may need to be addressed by a professional licensing board are routed appropriately. Substantively, the goal of the terms of participation is to ensure that a licensee is safe to practice their profession through ongoing committee monitoring. Participants enter into a contract with the committee and agree to adhere to all terms and agreements set forth in the contract. If a contract provision is breached that poses an immediate risk to the public, the committee will immediately refer the matter to a professional licensing board for appropriate action to protect the public. Participation does not relieve a professional licensing board or licensee of any duties or consequences related to violations of the standards of practice, nor does it divest a professional licensing board of its authority. The committee also will refer any violations of the laws or rules governing the licensee’s practice to a professional licensing board

for appropriate action. All information related to participation in this program is confidential, including names of participants.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no specific financial costs for implementation or enforcement of these proposed rules outside of the Public Health Department's general administrative oversight of ensuring eligibility requirements are met. Costs associated with committee membership are incurred in accordance with Iowa Code section 272C.3(1)"k," as members of the committee receive actual expenses for the performance of their duties and are eligible to receive per diem compensation pursuant to Iowa Code section 7E.6.

There are costs to the licensee. To be eligible for the program, a licensee must have a diagnosed impairment. This is often determined through a substance abuse or other type of evaluation to assess the potential impairment. Evaluations are conducted at the expense of the licensee. The terms of the contract set forth requirements the licensee must meet in order to participate in the program. This could include requirements to see a therapist, random drug screens, Alcoholics Anonymous meetings, etc. Requirements are based on the eligibility evaluation, as well as the unique needs of each licensee. Any contract requirements are conducted at the expense of the licensee.

- Classes of persons that will benefit from the proposed rulemaking:

The impaired practitioner program gives licensees an opportunity to receive the treatment they need and be rehabilitated. This sets up the licensees who complete the program to safely and successfully continue their practice, benefiting the public and licensees alike.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

If a licensee participates in the impaired licensee program, the licensee will have associated costs, such as evaluations, therapy and/or treatment and potential loss of income. Depending on the licensee's impairment, a professional licensing board may find that practice restrictions are necessary until the licensee is rehabilitated. This could limit the licensee's ability to work in the profession for a period of time. However, the purpose of the program is to limit the disruption in the licensee's profession while ensuring the public is receiving safe services. The program is confidential, which allows the licensee to seek rehabilitation without the licensee's business being affected by public knowledge of the impairment.

- Qualitative description of impact:

The availability of an impaired practitioner committee, generally, helps ensure important services remain available to Iowans by enabling licensees to practice the professions they have invested time and money into learning while protecting the public from licensees whose struggles with substance abuse or another mental or physical disorder or disability may otherwise impair their ability to practice with reasonable skill and safety. Any costs of this program associated with the Department's general administrative oversight of it are justified by the increased availability of needed services to Iowans and the contributions of the licensee's work and tax contributions to the overall economy.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to review applications and monitor participants of the program.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The availability of this program helps ensure important services remain available to Iowans by ensuring that licensees can practice the professions they have invested time and money into learning while protecting the public from licensees whose struggles with substance abuse or another mental or physical disorder or disability may otherwise impair their ability to practice with reasonable skill or safety. Any costs of this program associated with the Department's general administrative oversight of it are justified through the availability of needed services to Iowans and the contributions of the licensee's work and tax contributions to the overall economy. The program offers an alternative to a discipline program, which is highly preferred to public discipline for licensees who struggle with a substance abuse disorder or mental or physical disorder or disability. To ensure that this program meets the intended need of supporting licensees with impairments without endangering the public, eligibility criteria are essential to ensure the program is serving its intended population.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

This program is less restrictive than discipline. The program is not punitive, and it is confidential. The program provides the ability for individuals dealing with impairment to heal privately while simultaneously being monitored by a qualified group of professionals to ensure the public is protected. The costs of the program are individually based and determined by the evaluations and needs of the licensee. At this time, the Department has not identified a less restrictive alternative for the impaired practitioner review committee.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

At this time, the Department has not identified any alternative methods for the impaired practitioner review committee.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Iowa Code section 272C.3(1)“k” requires that the Department establish a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability. This program is an alternative to a discipline program that is highly preferred to public discipline. In order to ensure that this program is meeting the intended need of supporting licensees with impairments, eligibility criteria and terms of participation in the program are essential to ensure the program is serving its intended purpose and population. This program is the least restrictive alternative to accomplish the intended benefit of Iowa Code section 272C.3(1)“k.”

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking provides an alternative for small business licensees who may be encountering impairment. Instead of being subject to discipline procedures, the licensee may enter the confidential program to seek assistance. When the licensee graduates from the program, the licensee will gain full privilege of licensure. Disciplinary proceedings are often costly for the licensee to hire legal counsel and can result in suspension or revocation of the license. This program allows the licensee to maintain the license and be monitored to ensure safe practice for all Iowans.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 193 and adopt the following **new** chapter in lieu thereof:

CHAPTER 193
IMPAIRED PRACTITIONER REVIEW COMMITTEE

641—193.1(272C) Definitions. For the purpose of these rules, the following definitions apply:

“*Committee*” means the impaired practitioner review committee as established by a licensing board pursuant to the authority of Iowa Code section 272C.3(1) “k.”

“*Contract*” means the written document establishing the terms for participation in the impaired practitioner program prepared by the committee.

“*Impairment*” means an inability to practice with reasonable safety and skill as a result of substance abuse disorder, dependency, or addiction or any mental or physical disorder or disability.

“*Licensing board*” or “*board*” means “licensing board” or “board” as defined in Iowa Code section 272C.1.

“*Practitioner*” means a person licensed under Iowa Code chapter 105, 147, 148C, 149, 152B, 152C, 152D, 154A, 154E, or 155.

“*Self-report*” means the licensee’s providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board’s receiving a complaint or report alleging the same from a second party.

641—193.2(272C) Purpose. The impaired practitioner review committee evaluates, assists, monitors and, as necessary, makes reports to the licensing board on the recovery or rehabilitation of practitioners who self-report impairments. These rules do not apply to an impaired practitioner review committee governed by other administrative rule or statute.

641—193.3(272C) Composition of the committee. The chairperson of the board shall appoint the members of the committee. The committee will meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring. The membership of the committee includes, but is not limited to:

193.3(1) One practitioner, licensed under the same board or similar professional licensing board who has successfully completed a board-approved recovery program and board-ordered probation for substance abuse disorder, dependency, or addiction and who has remained free of addiction for a period of no less than two years.

193.3(2) One practitioner with expertise in substance abuse disorder, dependency, or addiction treatment programs.

193.3(3) One public member of the board.

641—193.4(272C) Eligibility. To be eligible for participation in the impaired practitioner recovery program, a licensee must meet all of the following criteria:

193.4(1) The licensee self-reports an impairment or suspected impairment directly to the office of the board.

193.4(2) The licensee has not engaged in the unlawful diversion or distribution of controlled substances or illegal substances.

193.4(3) At the time of the self-report, the licensee is not already under board order for an impairment or any other violation of the laws and rules governing the practice of the profession.

193.4(4) The licensee has not caused harm or injury to a client.

193.4(5) There is currently no board investigation of the licensee that, as determined by the committee, concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care.

193.4(6) The licensee has not been subject to a civil or criminal sanction or ordered to make reparations or remuneration by a government or regulatory authority for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of the licensee's profession.

193.4(7) The licensee has provided truthful information and fully cooperated with the board or committee.

641—193.5(272C) Terms of participation in the impaired practitioner recovery program. A licensee shall agree to comply with the terms for participation in the impaired practitioner recovery program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period will be established by the committee and communicated to the licensee in writing.

193.5(1) *Noncompliance.* Failure to comply with the provisions of the contract will result in the committee immediately referring the matter to the board for possible disciplinary action.

193.5(2) *Practice limitations.* The committee may impose limitations on the licensee's practice as a term of the contract until such time as the committee receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill.

a. As a condition of participating in the program, a licensee must agree to limited practice in accordance with the terms specified in the contract.

b. In the event that the licensee refuses to agree to or comply with the limitations established in the contract, the committee will refer the licensee to the board for appropriate action.

641—193.6(272C) Limitations. The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired practitioner program. As set forth in Iowa Code section 272C.3(1) "k," participation in the program does not relieve the board of any duties or divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant will be referred to the board for appropriate action.

641—193.7(272C) Confidentiality. The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Participation in the impaired practitioner program and information in the possession of the board or the committee about licensees in the program will not be disclosed to the public.

These rules are intended to implement Iowa Code chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 194
“Nonpayment of State Debt”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272D
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 272D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

Via video/conference call:
meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth HHS procedure in denying the issuance, renewal, suspension or revocation of a professional license for nonpayment of state debt. This process commences upon receipt of a certificate of noncompliance from the centralized collection unit of the Department of Revenue.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Applicants or licensees found to be noncompliant by the Department will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Members of the public served by professionals licensed by HHS will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Estimated figures below are projections based on past program performance as included in the Red Tape Rule Report for this chapter.

Identified Impacts*

| | SFY 2024 | SFY 2025 | SFY 2026 | SFY 2027 | SFY 2028 | Five-Year Total |
|-----------------------------------|------------|------------|------------|------------|------------|-----------------|
| Costs | | | | | | |
| HHS Implementation | -\$350 | -\$350 | -\$350 | -\$350 | -\$350 | -\$1,750 |
| Benefits | | | | | | |
| Increased Public Safety and Trust | Intangible | Intangible | Intangible | Intangible | Intangible | Intangible |
| Net Value | -\$350 | -\$350 | -\$350 | -\$350 | -\$350 | -\$1,750 |

*All monetary figures have been rounded to the nearest thousandth.

- Qualitative description of impact:

Denying professional licensure for nonpayment of state debt ensures licensees of the Department engage in professional conduct at a level suitable to their profession, leading to increased public safety and trust in HHS licensure programs.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs personnel costs for team members to manage this process. These costs are reflected in the table above as “HHS Implementation.”

- Anticipated effect on state revenues:

No impact has been identified.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost-benefit analysis above shows a net value of \$1,750 and an increase in public safety and trust. Eliminating the denial of licensure for nonpayment of state debt may result in the licensure of some individuals that do not engage in professional conduct of the level to which the State desires. Diminished professional conduct of licensees may lead to a decrease in public safety and a lack of trust in licensees regulated by the Department.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less costly method has not been identified to achieve the purpose of this rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

HHS implements this process in accordance with the procedure set forth in the Iowa Code. This chapter describes HHS timelines and communication methods for completing the procedure but does not ascribe additional department duties or implementation elements in addition to those directly defined in the Iowa Code.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 194 and adopt the following **new** chapter in lieu thereof:

CHAPTER 194
NONPAYMENT OF STATE DEBT

641—194.1(272D) Definitions. For the purpose of this chapter, the following definitions shall apply.

“*Applicant*” means an individual who is seeking the issuance of a license.

“*Centralized collection unit*” means the centralized collection unit of the Iowa department of revenue.

“*Certificate of noncompliance*” means the same as defined in Iowa Code section 272D.1.

“*Denial notice*” means a licensing authority notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 272D.

“*License*” means the same as defined in Iowa Code section 272D.1.

“*Licensing authority*” means a board, commission, or any other entity of the department which has authority within this state to suspend or revoke a license or deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, or profession.

“*Revocation or suspension notice*” means a licensing authority notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 272D.

“*Withdrawal certificate*” means the same as defined in Iowa Code section 272D.1.

641—194.2(272D) Denial of issuance or renewal of a license or suspension or revocation of a license. The licensing authority shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit per the procedure set forth in Iowa Code chapter 272D. This rule shall apply in addition to the procedures set forth in Iowa Code chapter 272D.

194.2(1) Service of denial, suspension or revocation notice. Notice will be served upon the applicant or licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

194.2(2) Licensees and applicants responsible to inform licensing authority. Licensees and applicants shall keep the licensing authority informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D. Licensees and applicants shall also provide the licensing authority copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 272D, all court orders entered in such actions, and any withdrawals of certificates issued by the centralized collection unit.

194.2(3) Reinstatement following license denial, suspension or revocation. All licensing authority fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the licensing authority has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 272D.

194.2(4) *Effect of filing in district court.* In the event an applicant or a licensee files a timely district court action following service of a denial notice by a licensing authority or service of a revocation or suspension notice, the licensing authority will continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or of the suspension or revocation of a license, the licensing authority will count the number of days before the action was filed and the number of days after the action was disposed of by the court.

194.2(5) *Final notification.* The licensing authority will notify the applicant or licensee in writing through regular first-class mail, or by such other means as the licensing authority determines appropriate in the circumstances and will similarly notify the applicant or licensee if the license is issued or renewed following the licensing authority's receipt of a withdrawal certificate.

641—194.3(272D) *Sharing of information.* The department may share applicant or licensee information with the centralized collection unit pursuant to Iowa Code chapter 272D.

These rules are intended to implement Iowa Code chapter 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 196
“Emergency Medical Services—Military Service, Veteran Reciprocity,
and Spouses of Active Duty Service Members”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C
State or federal law(s) implemented by the rulemaking: Iowa Code section 147D.1—EMS Personnel
Licensure Interstate Compact

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

Via video/conference call:
meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth HHS procedure to expedite the application for a professional license for those persons married to an active-duty member of the military forces of the United States or for those persons who are a veteran, and to provide reciprocity in licensure for such persons who are currently licensed in another state. The chapter also provides for the application of military education, training, and service as credit toward any experience or educational requirement of licensure.

This chapter applies only to the Department’s emergency medical services licensure program; this is the only licensing program covered by the requirements of Iowa Code chapter 272C to remain under the auspices of HHS upon implementation of the government reorganization. Procedures detailed additionally support the EMS Personnel Licensure Interstate Compact described in Iowa Code chapter 147D.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
None have been identified.
 - Classes of persons that will benefit from the proposed rulemaking:
Veterans applying for licensure, military service applicants and spouses of active-duty members of the military applying for licensure, and members of the public served by professionals licensed by HHS will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

Estimated figures below are projections based on past program performance as included in the Red Tape Rule Report for this chapter.

Identified Impacts*

| | SFY 2024 | SFY 2025 | SFY 2026 | SFY 2027 | SFY 2028 | Five-Year Total |
|---|------------|------------|------------|------------|------------|-----------------|
| Costs | | | | | | |
| HHS Implementation | -\$166 | -\$166 | -\$166 | -\$166 | -\$166 | -\$830 |
| Benefits | | | | | | |
| Increased Veteran and Public Safety Support | Intangible | Intangible | Intangible | Intangible | Intangible | Intangible |
| Net Value | | | | | | |

*All monetary figures have been rounded to the nearest thousandth.

- Qualitative description of impact:

Expedited licensure of qualified current and former military members and their spouses increases public access to emergency medical services personnel, thus enhancing the State’s ability to protect public health and safety.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

HHS incurs personnel costs for team members to manage this process. These costs are reflected in the table above as “HHS Implementation.” The costs to staff time will be less than typical for a non-veteran/active-duty spouse due to the expedited nature of the licensure. The calculation is one hour of staff time saved multiplied by a predicted five veteran or active-duty spouses or veteran applicants each year. The EMS training programs will justify the military credit received by military service applicants, therefore no cost to the Department will be incurred.

- Anticipated effect on state revenues:

No impact has been identified.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost-benefit analysis above shows a net value of approximately \$166 in savings per year and an increase in public health and safety. Eliminating expedited licensure for current and former members of the military and their spouses or eliminating privilege to practice in licensure across states for such individuals may result in fewer persons applying for licensure. This could result in a decrease in emergency medical services personnel available to protect public health and safety.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less costly method has not been identified to achieve the purpose of this rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

HHS implements this process in accordance with the procedure set forth in the Iowa Code. This chapter describes HHS timelines and communication methods for completing the procedure, but does not ascribe additional Department duties or implementation elements in addition to those directly defined in the Iowa Code.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 196 and adopt the following new chapter in lieu thereof:

CHAPTER 196

EMERGENCY MEDICAL SERVICES—MILITARY SERVICE, VETERAN RECIPROCITY,
AND SPOUSES OF ACTIVE DUTY SERVICE MEMBERS

641—196.1(272C) Definitions.

“*License*” means the same as defined in Iowa Code section 272D.1.

“*Licensing authority*” means the same as defined in Iowa Code section 272D.1.

“*Military service*” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c)(2021); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101(2006).

“*Military service applicant*” means an individual requesting credit toward licensure for military education, training, or service obtained or completed in military service.

“*Spouse*” means a spouse of an active duty member of the military forces of the United States.

“*Veteran*” means the same as defined in Iowa Code section 35.1.

641—196.2(272C,147D) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting a military service application form to the licensing authority. No fee is required with submission of an application for military service credit.

196.2(1) The licensing authority shall grant credit requested in the application pursuant to the EMS Personnel Licensure Interstate Compact described in Iowa Code section 147D.1.

196.2(2) The licensing authority shall inform the military service applicant in writing of the credit, if any, given toward an experience or educational qualification for licensure or explain why no credit was granted. The applicant may request reconsideration upon submission of additional documentation or information.

196.2(3) A military service applicant who is aggrieved by the licensing authority’s decision may appeal pursuant to the provisions of 441—Chapter 7, except that no fees or costs shall be assessed against the military service applicant in connection with a contested case conducted pursuant to this subrule.

196.2(4) The licensing authority shall grant or deny the credit requested in the military service application prior to ruling on the application for licensure. The applicant shall not be required to submit any fees in connection with the licensure application unless the licensing authority grants the credit requested in the military service application. If the licensing authority does not grant the credit requested in the military service application, the applicant may withdraw the licensure application or request that the licensure application be placed in pending status for up to one year or as mutually agreed. The withdrawal of a licensure application shall not preclude subsequent applications supported by additional documentation or information.

641—196.3(272C,147D) Veteran and active duty military spouse privilege to practice. A veteran or spouse with an unrestricted license in another EMS Personnel Licensure jurisdiction may practice in Iowa pursuant to the EMS Personnel Licensure Interstate Compact described in Iowa Code section 147D.1.

These rules are intended to implement Iowa Code sections 272C.4 and 147D.1.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 202
“Certificate of Need Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135.62(2)“e”(5)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 135.61 through 135.83

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Rebecca Swift
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.218.4969
Email: rebecca.swift@dia.iowa.gov

Purpose and Summary

The Iowa Code currently mandates the existence of the State Health Facilities Council (Council) and the Certificate of Need (CON) process and these administrative rules. The statutory goal is to protect access to affordable healthcare options, especially in rural areas and for medically underserved populations. Institutional health facilities, including, but not limited to, hospitals, health care facilities, birthing centers, and ambulatory surgery centers, must acquire a CON prior to offering services.

This chapter establishes the CON process when adding beds, building a new facility or purchasing certain medical equipment. It provides an overview of each step in the process and information about the role of the State Health Facilities Council and its duties. This chapter also publicly illustrates the process and criteria that will be used by the Council in determining whether or not to grant a CON to an applicant.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Applicants for a CON are responsible for the fees associated with the application. Fees are three-tenths of one percent of the estimated cost of the project, with a minimum fee of \$600 and a maximum fee of \$21,000. Intermediate Care Facilities for the Intellectually Disabled and Mentally Ill are exempt from the fee. Fees are deposited into the General Fund.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rulemaking and the statutory goal is to protect access to affordable healthcare options, especially in rural areas and for medically underserved populations. There are no direct costs to the general public to comply with any of the rules in this chapter. Note that there may be indirect costs to patients of these health facilities.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

As noted above, applicants for a CON pay a fee of three-tenths of one percent of their estimated total project costs with a minimum fee of \$600 and a maximum fee of \$21,000. Applications for Intermediate Care Facilities for the Intellectually Disabled or Persons with Mental Illness are exempt from paying the application fee. Fees collected are deposited into the General Fund.

In comparing Iowa to nearby states, Nebraska has a \$1,000 fee; Illinois has a \$2,500 filing fee; Missouri's fee is a minimum of \$1,000 or one-tenth of one percent of the total project cost, whichever is greater; and Wisconsin, while having a variation of the certificate of need program, has an application fee equal to 0.37 percent of the estimated project cost, but not less than \$1,850 and not more than \$37,000. Minnesota has a variation of the CON program and no information on fees was found.

- Qualitative description of impact:

Based on the current statute, the rules, in order to operationalize the CON program as directed in statute, the application fees support the staffing needs. Thirty-five states and Washington, D.C., maintain CON programs. In addition, there are several U.S. territories that have CON programs, as well as three states — Minnesota, Wisconsin, and Arizona — that have variations of the CON program. Neighboring states Kansas and South Dakota, along with 10 other states across the country, offer less restrictive statutory means by not requiring a CON.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There is 1.0 full-time equivalent (FTE) position associated with the CON program in addition to administrative support and the Office of the Attorney General. The program manager implements all aspects of the program and provides support to the State Health Facilities Council which includes correspondence with applicants, stakeholders, and the public.

- Anticipated effect on state revenues:

Fees paid by applicants to apply for a CON are deposited into the General Fund. The staff salary to support the work of the program and program operations come from the General Fund.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating the fees paid by CON applicants would have a detrimental impact on dollars deposited into the General Fund. This would have a negative impact on the ability of the agency to effectively administer the CON program as required by statute. Eliminating CON could result in an excess of health facilities, causing redundancies in health care and does not guarantee rural access.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

One less restrictive alternative would be to reduce the amount of the fees collected from eligible CON applicants.

The Boards and Commissions Review Committee recommended the Council be eliminated and transfer the duties of the program to DIAL.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

As mentioned above, neighboring states Kansas and South Dakota, along with 10 other states across the country, offer less restrictive statutory means by not requiring CON. One alternative method that could be considered would be to eliminate or restructure the CON program in Iowa.

The Iowa Code currently mandates the existence of the Council and the CON process and these administrative rules. The rules provide consistency related to the submission of an application for a CON.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

This is a legislative issue as the statute clearly mandates this chapter — the current rules accurately enforce the current statute.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Institutional Health Facilities include hospitals, health care facilities (e.g., a nursing facility), organized outpatient health facilities, ambulatory surgery centers, community mental health facilities and birthing centers; some of these may be considered small businesses. Typically, the smaller businesses, such as some ambulatory surgery centers or birthing centers, have less expensive projects that incur less cost and pay smaller fees than larger businesses, such as hospitals.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 202 and adopt the following **new** chapter in lieu thereof:

CHAPTER 202 CERTIFICATE OF NEED PROGRAM

641—202.1(135) Definitions. For purposes of this chapter, the following definitions apply:

“*Acute care category of bed usage,*” as the term applies in Iowa Code section 135.63(2)“*k,*” is the same as the acute care categories listed in the state survey section of the American Hospital Association Annual Survey of Hospitals.

“*Any expenditure in excess of five hundred thousand dollars,*” as defined in Iowa Code section 135.61(18)“*e,*” means new capital expenditures necessary to operate the service for a year.

“*Any mobile health service with a value in excess of one million five hundred thousand dollars,*” as defined in Iowa Code section 135.61(18)“*l,*” means the value of all equipment used to provide the service, including the trailer. The party providing the equipment is the applicant regardless of the location of that party.

“*Appropriate geographic service area,*” as the term applies to defining affected persons in Iowa Code section 135.61(1)“*c,*” is defined as follows:

1. For applications regarding hospitals, hospitals located in the same county and in Iowa counties contiguous to the county wherein the applicant hospital's proposed project will be located.

2. For applications regarding health care facilities, other health care facilities located in the same county and in Iowa counties contiguous to the county wherein the applicant's proposed health care facility will be located.

3. For applications sponsored by other than the hospitals or health care facilities specified in paragraphs "1" and "2," those providers within the same county who offer similar service or might logically be viewed as potential providers of such service.

"Bed capacity" is defined as follows:

1. For hospitals, bed capacity is defined as the total facility licensed beds as reported on the state survey section of the American Hospital Association Annual Survey of Hospitals.

2. For health care facilities, bed capacity is defined as a facility's licensed bed capacity according to the department of inspections, appeals, and licensing.

"Cardiac catheterization service," as the term applies to a new or changed institutional health service in Iowa Code section 135.61(18) "m"(1), means the initiation or expansion of this service.

"Consumers served by a new institutional health service" means those consumers residing in the service area as determined by the department.

"Long-term (acute) care hospital," for purposes of these rules, means a hospital that has been approved to participate in the Title XVIII (Medicare) program as a long-term care hospital-prospective payment system hospital (LTCH-PPS) in accordance with 42 CFR Part 412, as amended to October 11, 2023.

"Open heart surgical service," as the term applies to new or changed institutional health service in Iowa Code section 135.61(18) "m"(2), means the initiation or expansion of this service.

"Organ transplantation service," as the term applies to a new or changed institutional health service in Iowa Code section 135.61(18) "m"(3), means the initiation or expansion of this service. Each type of organ transplant shall be considered separately.

"Permanent change in bed capacity of an institutional health facility," includes, but is not limited to, the following:

1. A conversion of a long-term acute care hospital, a rehabilitation hospital or a psychiatric hospital as defined by federal regulations to a general acute care hospital or to a different type of specialty hospital.

2. A hospital that has deleted beds pursuant to Iowa Code section 135.63(2) "g" for the purpose of receiving designation as a critical access hospital reestablishes the deleted beds at a later time, provided that the number of beds reestablished does not exceed the number of beds maintained prior to the deletion as reported on the bed reduction form.

"Physical facility," as the term applies in Iowa Code section 135.61(18) "f," means a separately licensed facility.

"Private offices and private clinics of an individual physician, dentist, or other practitioner or group of health care providers." The meaning of this term as used in Iowa Code section 135.63(2) "a" is determined by looking at factors that include, but are not limited to:

1. The type of health care service delivered;

2. The control and supervision of medical judgment in the care of and treatment of patients;

3. The control and supervision of professional assistants, including nurses, physician assistants, and technicians;

4. The ownership and maintenance of medical records of patients.

The term excludes an ambulatory surgical center as defined in Iowa Code section 135R.1.

"Radiation therapy service applying ionizing radiation for the treatment of malignant disease using megavoltage external beam equipment," as the term applies to new or changed institutional health service in Iowa Code section 135.61(18) "m"(4), means the initiation or expansion of this service.

"Rehabilitation hospital," for the purposes of these rules, means a hospital that has been approved to participate in the Title XVIII (Medicare) program as an inpatient rehabilitation facility-prospective payment system hospital (IRF-PPS) in accordance with 42 CFR Part 412.23(b), 412.25 or 412.29, as amended to October 11, 2023.

“Relocation of an institutional health facility,” as the term applies to new or changed institutional health service in Iowa Code section 135.61(18) “b,” means the replacement of a facility located in one county with a facility located in another county.

“Value in excess of one million five hundred thousand dollars,” as used in Iowa Code section 135.61(18) “g,” “h,” “i” and “j,” means the value of the equipment including any applicable sales tax, delivery charge and installation charge. With respect to the initiation of radiation therapy services applying ionizing radiation for the treatment of malignant disease using the megavoltage external beam equipment, the term includes the cost of constructing a vault.

641—202.2(135) Letter of intent.

202.2(1) Before applying for a certificate of need, the sponsor of a proposed new institutional health service or changed institutional health service will electronically submit a letter of intent meeting the criteria noted in Iowa Code section 135.65(1) and the project’s estimated cost (site costs, land improvements, facility costs, movable equipment and financing costs, and any applicable sales tax for movable equipment, any applicable delivery charge for movable equipment, and any applicable installation charge for movable equipment).

202.2(2) The department will make available on the certificate of need web page all criteria and standards that are pertinent to an application.

202.2(3) A letter of intent received by the department is valid for a period of one year from the date of receipt by the department. The sponsor may renew the validity of a letter of intent by providing written notification to the department prior to the one-year expiration date.

641—202.3(135) Determination of reviewability. A sponsor of a proposed project may submit a written request for a determination of reviewability as to whether the project requires a certificate of need.

202.3(1) The request should include sufficient details of the proposed project and cite the sections of the Iowa Code that the sponsor relies upon to assert the project is not reviewable.

202.3(2) Upon receipt of a written request from the sponsor of a project, the department will determine if a proposed project requires a certificate of need under Iowa Code sections 135.61 to 135.83. The department may request additional information about the project to make the determination.

a. If it is determined that a certificate of need is required, the sponsor will be notified by the department and the request for nonreviewability will be considered the letter of intent for purposes of subrule 202.2(2).

b. If it is determined that a certificate of need is not required, the sponsor will be notified by the department and the determination of nonreviewability will be placed on the next agenda of the state health facilities council for consideration.

c. The notification to the sponsor of the results of the department’s review of the request will include specific Iowa Code citations relied upon to support the determination.

641—202.4(135) Submission of application.

202.4(1) Application form.

a. A sponsor of a proposed project for a new or changed institutional health service will submit to the department an application for certificate of need by using the appropriate application form found on the certificate of need web page. All information requested in the application form will be required in the absence of a waiver by the department.

b. An original application and all attachments shall be submitted via electronic mail.

c. The department will establish and maintain electronic files on each application.

202.4(2) Application fee. The application fee specified in Iowa Code section 135.63(1) is based on the total cost of the project, including site costs, land improvements, facility costs, and movable equipment.

a. The fee for leased or donated new institutional health services is calculated in the same manner as if the new institutional health services were purchased.

- b.* The leased equipment fee is based on total value of the lease, plus sales tax, delivery and installation.
- c.* The lease of space includes the cost of a one-year-lease payment for the space.
- d.* Financing costs are not applicable on leases or cash purchases.
- e.* The application fee will be refunded by the department for any application that is voluntarily withdrawn from the review process in the amounts specified in Iowa Code section 135.63(1).
- f.* For purposes of this subrule and Iowa Code section 135.63(1), the term “submission” means the day the application is received by the department.

641—202.5(135) Organizational procedures.

202.5(1) The presence of three members of the council shall constitute a quorum.

202.5(2) The chair and all other council members present will cast votes or abstain, as the case may be, on all council action. No proxy votes shall be allowed.

202.5(3) A vote of a majority of those present will be necessary to take action on any motion before the council. A tie vote means no action on the motion.

202.5(4) The council will, at the first meeting after July 1 of each odd-numbered year, elect a vice-chair to perform the duties of the chair in their absence, when the chair has a conflict of interest or when the chair so directs.

202.5(5) A council member will refrain from participating in an application review process if the member:

- a.* Has a personal bias or prejudice concerning the applicant;
- b.* Has acted as counsel to the applicant or a competitor of the applicant in the same or adjoining county within the past two years;
- c.* Has a financial interest in the outcome of the application process or any other significant personal interest that could be substantially affected by the outcome of the case;
- d.* Has a spouse or relative within the third degree of relationship that (1) is affiliated with or represents the applicant or a competitor of the applicant in the same or adjoining county; (2) has a known financial or significant personal interest that could be substantially affected by the outcome of the application process; or (3) is likely to testify on behalf of the applicant or an affected person at public hearing; or
- e.* Has any other legally sufficient cause to refrain from participating in the application review process.

641—202.6(135) Public hearing on application. Public hearings conducted pursuant to Iowa Code section 135.66(3) “*b*” are not contested cases.

Judicial review pursuant to Iowa Code section 17A.19 of final agency decisions under Iowa Code section 135.69 will be treated as other agency action.

202.6(1) The council will use the following meeting format:

- a.* Announcement of application under review.
- b.* Presentation of department report.
- c.* Applicant presentation.
- d.* Affected persons’ presentation.
- e.* Applicant’s rebuttal.
- f.* Council discussion, motion and final decision.

202.6(2) The notice of an accepted application issued pursuant to Iowa Code section 135.66(2) will inform the applicant and affected persons of the deadlines for the electronic submission to the department of written statements or other materials. These deadlines will also be posted on the certificate of need web page. Written submissions received by the department after the deadlines established in this notice will not be considered by the department or the council unless submitted at the public hearing solely to support oral testimony or upon a showing of good cause.

202.6(3) The applicant, affected persons, or their designated representatives will be given the opportunity to make oral presentations to the council. Other interested persons may be given the opportunity to make oral presentations to the council.

202.6(4) Oral testimony that simply duplicates material received in writing will not be heard. The applicant and affected persons will present only one witness for each issue raised unless permission is requested and granted by the chair.

202.6(5) All questions to an applicant or affected person presenting oral testimony will be directed from the council or council staff unless permission is requested and granted by the chair. Persons making oral presentations to the council are not expected to be placed under oath.

202.6(6) The council may designate technical consultants or experts to assist in its activities as defined by the council.

641—202.7(135) Summary review. Pursuant to Iowa Code section 135.67, an applicant requesting a summary review will abide by the following procedures:

202.7(1) Electronically submit a written request for summary review, and a copy of the application and all attachments. The applicant is not required to submit a letter of intent pursuant to Iowa Code section 135.65 prior to submitting a written request for a summary review.

202.7(2) The eligibility of an application for summary review pursuant to Iowa Code section 135.67 does not mandate or require such review. The department will make the decision as to whether an application will be reviewed in the summary review process.

202.7(3) Upon receipt of a written request for summary review, an application, and the fee required by Iowa Code section 135.63(1), the department will notify the applicant in writing within 15 calendar days if the application is complete and if a summary review will be granted.

202.7(4) If an application is deemed incomplete, the department will state specifically in writing what information is needed to make the application complete.

202.7(5) If the department notifies the applicant that a summary review will not be performed, this decision is binding on the applicant and the application will be entered into the formal review process on the date of written notice that such application will not be reviewed summarily.

202.7(6) A summary review of an application for a certificate of need will be completed within 60 calendar days of the acceptance of an application by the department.

202.7(7) At any time during the summary review process, an application may be withdrawn without prejudice from the process. The applicant may then submit the application for a formal 90-day review.

641—202.8(135) Extension of review time.

202.8(1) A formal review of an application for a certificate of need pursuant to Iowa Code section 135.66 may be extended by the department on the basis of any of the following criteria:

- a. In order to review competing applications simultaneously;
- b. In the case of technologically innovative equipment, to obtain additional information necessary to evaluate the proposal. The department will specify in writing such additional information as necessary;
- c. At the request of the applicant;
- d. At the request of at least two members of the state health facilities council in order to allow additional time for deliberation on all evidence present. The council will specify the time of the delay and the date on which the final decision will be rendered.

202.8(2) An extension by the department made pursuant to subrule 202.8(1) will in no case be more than 60 calendar days beyond the time a decision is required under Iowa Code section 135.69 unless the applicant and department agree.

202.8(3) Where none of the provisions of 202.8(1) are applicable and where an application will be automatically denied because of the expiration of time required by Iowa Code section 135.69 for the issuance of a written decision by the council, the department will notify the applicant of the likelihood of an automatic denial and will ask the applicant to request in writing an extension of the review time.

Where an extension is so requested, the application will be heard at the next regularly scheduled meeting of the council or at any time agreeable to the applicant and the department.

641—202.9(135) Rehearing of certificate of need decision.

202.9(1) The applicant or any affected person who has participated or sought unsuccessfully to participate in the formal review procedure prescribed in Iowa Code section 135.66 may, for good cause shown, file an application for rehearing in writing with the department stating the specific grounds therefor and the relief sought, within 20 calendar days after the date of the issuance of the final decision on an application for certificate of need.

202.9(2) Grounds for rehearing include, but are not limited to:

- a.* New significant, relevant information that was unavailable at the date of the hearing;
- b.* Significant changes in factors or circumstances relied upon by the council in reaching its decision;
- c.* Demonstration that the council has materially failed to follow its adopted procedures in reaching its decision; or
- d.* Such other bases as the council determines constitute good cause.

202.9(3) An application for rehearing is deemed to have been denied unless the council grants the application in writing within 20 calendar days after its filing.

202.9(4) If the application for rehearing is granted, the council may issue an order modifying the initial final order, or may set the matter for consideration at a subsequent meeting date. If public hearing is granted on the application for rehearing, notice will be provided ten calendar days prior to hearing to the person applying for rehearing, the applicant and other affected persons upon request pursuant to 202.10(135).

202.9(5) The council will issue the final decision on rehearing, stating the basis for its decision, within 30 calendar days after the application for rehearing was granted or 30 calendar days after public hearing on rehearing, whichever is later.

202.9(6) If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken in the manner provided by Iowa Code chapter 17A. A request for rehearing is not required prior to appeal under Iowa Code section 17A.19.

641—202.10(135) Status reports to affected persons. Affected persons are entitled to status reports from the department while a formal application review is in progress pursuant to Iowa Code section 135.68. The department will maintain a log of all requests for written status reports by affected persons. Affected persons who request written status reports will submit an electronic request, identifying the specific information requested, which may include notification of the council's final decision, any application for rehearing, or the filing of a petition for judicial review. The formal process does not preclude informal contacts with department staff for verbal status reports. Printed copies of the council's final decision, an application for rehearing, a petition for judicial review, or any other public record will be provided upon request.

641—202.11(135) Finality. The certificate of need application process is continuous beginning with submission of a letter of intent or request for waiver of a letter of intent through issuance of a final decision by the council subject to judicial review under Iowa Code chapter 17A.

202.11(1) The following stages of the process are intermediate and subject to judicial review only to the extent they meet criteria for intermediate review under Iowa Code section 17A.19.

- a.* A decision by the department pursuant to 641—202.3(135) that a proposed project does not require a certificate of need;
- b.* A decision by the department to waive submission of the letter of intent and substitute summary review; and
- c.* The rejection of an application by the department that fails to provide all information required under Iowa Code section 135.63(1).

202.11(2) The following stages of the process are final decisions subject to judicial review as final agency action under Iowa Code section 17A.19:

- a.* A decision by the department to disallow summary review;
- b.* A decision by the council that a proposed project does not require a certificate of need;

- c. A decision by the council to approve or deny an application;
- d. The council's final ruling on an application for rehearing; and
- e. A decision by the council to revoke a certificate of need pursuant to 641—202.13(135).

641—202.12(135) Project progress reports. The sponsor of an approved application will submit a progress report using the form available on the certificate of need web page six months after approval at hearing. Progress reports shall fully identify the project and indicate the current status of the project in descriptive terms. The reports should also reflect an amended project schedule if necessary.

641—202.13(135) Request for extension of certificate.

202.13(1) A request by the applicant for an extension of a certificate of need should be filed with the department using the form available on the certificate of need web page no later than 30 days prior to the expiration of the certificate of need.

202.13(2) A request for extension should fully identify the project and indicate the current status of the project in descriptive terms.

202.13(3) Any affected person has the right to submit to the department in writing, or orally at the council meeting at which the extension request is considered, information that may be relevant to the question of granting an extension.

202.13(4) When an extension has been requested, the council will approve or deny the request at a meeting of the council preceding the expiration of the certification. The certificate of need may be revoked by the council at the end of the certification period for insufficient progress in developing the project.

202.13(5) If the extension is denied, the applicant has the right to appeal under the provisions of Iowa Code section 135.70.

641—202.14(135) Application changes after approval.

202.14(1) Once a project has been approved by the council, no changes that vary from or alter the number of approved beds, the approved services or the approved cost by an amount indicated in 202.14(2) may be made unless requested by the applicant and approved by the council. Requests should be made in writing and filed with the department electronically.

202.14(2) An increase in the actual cost of the project over and above that originally approved will automatically generate review by the council if the increase exceeds the originally approved amount by:

- a. Fifteen percent for projects up to \$999,999.99;
- b. Twelve percent for projects from \$1,000,000.00 to \$4,999,999.99;
- c. Eight percent for projects \$5,000,000.00 and over.

An increase in the approved cost that falls below the above percentages will be reported to the department.

202.14(3) Failure to notify and receive permission of the council to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 135.73. The council may make a recommendation to the department regarding the imposition of a sanction and the amount of the fine to be imposed.

641—202.15(135) Sanctions. Hearings to determine class I or class II violations pursuant to Iowa Code section 135.73 will be conducted in accordance with the department's procedural rules for contested cases found at 641—Chapter 173.

641—202.16(135) Reporting requirements. For the purposes of the annual reports and data compilation required in Iowa Code sections 135.75 and 135.78, the department will utilize the AHA Annual Survey of Hospitals with the state survey addendum for hospitals and the cost reports for health care facilities submitted to the Medicaid enterprise of the department of health and human services.

These rules are intended to implement Iowa Code sections 135.61 to 135.79 and 135.83.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 641—Chapter 203
“Standards for Certificate of Need Review”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135.62(2)“e”(5)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 135.61 through 135.83

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing (DIAL) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Rebecca Swift
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.218.4969
Email: rebecca.swift@dia.iowa.gov

Purpose and Summary

The Iowa Code currently mandates the existence of the State Health Facilities Council (Council) and the Certificate of Need (CON) process and these administrative rules. Applicants for a CON and affected parties benefit from this chapter as it provides guidance on adding services such as cardiac catheterization and cardiovascular surgery, and radiation therapy; and on the purchase of specific pieces of medical equipment, including MRI, PET and CT. The additional benefit is to those applicants who wish to add beds to a health care facility, such as a nursing home. The chapter outlines a bed need formula and additional factors that are used by applicants to determine whether there is a need for more beds in their area. The chapter benefits the Council when it reviews applications as it provides standards for the addition of certain services, for certain medical equipment purchases and the addition of health care facility beds. This chapter also benefits those who might consider themselves an affected party to a specific application by keeping them informed of the standards for CON review.

This chapter also publicly illustrates some of the criteria that will be used by the Council in determining whether or not to grant a CON to an applicant.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

When applicable, applicants for a CON use the factors that are outlined in Chapter 203 to justify the need for their medical equipment purchase, addition of services or addition of beds. The Council uses the information in an application and voiced at the hearing in making its decision about whether or not to award a CON.

Applicants for a CON are responsible for the fees associated with the application. Costs are three-tenths of 1 percent of the estimated costs of the project, with a minimum fee of \$600 and a

maximum fee of \$21,000. Intermediate Care Facilities for the Intellectually Disabled and Mentally Ill are exempt from the fee. Fees are deposited into the General Fund.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rulemaking and the statutory goal is to protect access to affordable health care options, especially in rural areas and for medically underserved populations. There are no direct costs to the general public to comply with any of the rules in this chapter.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Applicants for a CON pay a fee of three-tenths of 1 percent of their estimated total project costs, with a minimum fee of \$600 and a maximum fee of \$21,000. All fees go to the General Fund. In 2022, \$69,174.72 from CON was collected and deposited in the General Fund.

In comparing Iowa to nearby states, Nebraska has a \$1,000 fee; Illinois has a \$2,500 filing fee; Missouri's fee is a minimum of \$1,000 or one-tenth of 1 percent of the total project cost, whichever is greater; and Wisconsin, while having a variation of the CON program, has an application fee equal to 0.37 percent of the estimated project cost, but not less than \$1,850 and not more than \$37,000. Minnesota has a variation of the CON program and no information on fees was found.

- Qualitative description of impact:

Based on the current statute, the rules, in order to operationalize the CON program as directed in statute, the application fees support the staffing needs. Thirty-five states and Washington, D.C., maintain CON programs. In addition, there are several U.S. territories that have CON programs, as well as three states – Minnesota, Wisconsin, and Arizona – that have variations of the CON program. Neighboring states Kansas and South Dakota, along with ten other states across the country, offer less restrictive statutory means by not requiring CON. One alternative method that could be considered would be to eliminate or restructure the CON program in Iowa.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There is 1.0 full-time equivalent (FTE) position associated with the CON program in addition to administrative support and the Office of the Attorney General. The program manager implements all aspects of the program and provides support to the State Health Facilities Council, which includes correspondence with applicants, stakeholders, and the public.

- Anticipated effect on state revenues:

Fees paid by applicants to apply for a CON are deposited into the General Fund. The staff salary to support the work of the program and program operations comes from the General Fund.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating the fees paid by CON applicants would have a detrimental impact on dollars deposited into the General Fund. This would have a negative impact on the ability of the agency to effectively administer the CON program as required by statute. Eliminating CON could result in an excess of health facilities, causing redundancies in health care, and does not guarantee rural access.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

One less restrictive alternative would be to reduce the amount of the fees collected from eligible CON applicants.

The Boards and Commissions Review Committee recommended the Council be eliminated and transfer the duties of the program to DIAL.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
Neighboring states Kansas and South Dakota, along with 10 other states across the country, offer less restrictive statutory means by not requiring CON. One alternative method that could be considered would be to eliminate or restructure the CON program in Iowa.

The Iowa Code currently mandates the existence of the Council and the CON process and these administrative rules. The rules provide consistency related to the submission of an application for a CON.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute clearly mandates this chapter, and the current rules accurately enforce the current statute.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Institutional health facilities include hospitals, health care facilities (e.g., a nursing facility), organized outpatient health facilities, ambulatory surgery centers, community mental health facilities and birthing centers. Some of these may be considered small businesses. Typically, the smaller businesses, such as some ambulatory surgery centers or birthing centers, have less expensive projects that incur less cost and pay smaller fees than larger businesses, such as hospitals.

Text of Proposed Rulemaking

ITEM 1. Rescind 641—Chapter 203 and adopt the following **new** chapter in lieu thereof:

CHAPTER 203 STANDARDS FOR CERTIFICATE OF NEED REVIEW

641—203.1(135) Cardiac catheterization and cardiovascular surgery standards.

203.1(1) Purpose and scope.

a. These standards are measures of some of those criteria found in Iowa Code sections 135.64(1)“a” to “q” and 135.64(3). Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these cardiac catheterization and cardiovascular surgery standards include:

- (1) Proposals to commence or expand capacity to perform cardiac catheterization.
- (2) Proposals to add new or replace cardiovascular surgery services.
- (3) Any other applications that relate to cardiac catheterization or cardiovascular surgery.

203.1(2) Definitions.

a. Adult cardiac catheterization laboratory—a diagnostic facility exclusively for intracardiac or coronary artery catheterization on adults.

b. Pediatric cardiac catheterization laboratory—the same as adult cardiac catheterization laboratory, except exclusively for children and infants.

c. Cardiac catheterization.

(1) Intracardiac—a diagnostic study of the heart, and pulmonary arteries, or both, in which a small catheter passes through a vein or artery in the neck, leg or arm and advances into the great vessels, the heart or the pulmonary arteries. Through this procedure one can measure pressure within the heart and in adjacent veins and arteries, collect blood samples for blood gas analysis and inject radiopaque material, visualize cardiac and vessel anatomy. The procedure permits detection of congenital and acquired heart abnormalities, the study of ventricular function, the estimation of the orifice size, the placement of pacemakers, etc. Cardiac catheterization is incomplete without cineangiography, intracardiac pressure measurements, blood gas analysis and the ability to diagnose intracardiac shunts.

(2) Coronary artery catheterization—a diagnostic study of the coronary arteries, in which a small catheter passes through an artery in the leg, neck or arm into a coronary artery orifice. Intravascular pressure measurements are taken, and angiography of the coronary arteries is performed. Catheterization and cineangiocardiology of the left ventricle are an integral part of this procedure.

d. Angiography. The photographic recording of X-ray or radiologic images of blood vessels, in any part of the body—the heart, the head, the great vessels, the kidney, etc. In the procedure blood vessels are injected with a radiopaque chemical. Immediately following injection, X-rays are employed to image the path of the injected chemical. These X-ray images are then photographically recorded.

e. Angiocardiography. The recording of moving X-ray images (fluoroscopic images) of the heart and great vessels. After injection of radiopaque chemicals, moving X-rays of the chemical's flow are projected on a screen called a fluoroscope. Moving pictures (cineangiocardiology) or still pictures in sequence (serialography) may be recorded of the X-ray image.

f. Adult cardiovascular surgery—cardiovascular surgery exclusively for adults.

g. Pediatric cardiovascular surgery—cardiovascular surgery exclusively for infants and children.

h. Cardiovascular surgery—the services associated with and surgery performed for congenital or acquired diseases of the heart, great vessels, or pericardium, including the placement of travenous and epicardial pacemakers.

(1) Open heart surgery—cardiovascular surgery in which an incision of sufficient size is made to allow direct vision of the area. Open heart surgery requires temporary use of a heart-lung (cardiopulmonary bypass) machine, as blood flow through the heart is greatly reduced or stopped altogether.

(2) Coronary artery surgery—surgery to correct inadequate blood flow to the heart through using revascularization techniques to bypass significantly obstructed coronary artery lesions.

i. Closed heart surgery—cardiovascular surgery in which a small incision and repairs are made without direct vision of the area.

203.1(3) *Availability of services.*

a. Minimum utilization—cardiovascular surgery (Iowa Code section 135.64(1) “c,” “g,” “h”).

(1) Adult cardiovascular surgical programs should project an annual minimum rate of over 200. Higher caseloads over 200 per annum, are encouraged.

(2) Pediatric cardiovascular surgical units should project a minimum of 100 pediatric heart operations after the first year, at least 75 of which must be open heart procedures.

(3) Combined adult/pediatric cardiovascular surgery units should project the minimum projected annual rates for both adult and pediatric surgery.

(4) Applicants should project utilization of cardiovascular surgery, catheterization and cardiac care units based upon service area population demographics, current regional or national utilization rates of the service, disease incidence and prevalence rates, current cardiac care treatment modes, and in consideration those adult cardiovascular surgery units currently operating in Iowa and bordering states within the project's service area.

b. Expansions—cardiovascular surgery (Iowa Code section 135.64(1) “c,” “d,” “e,” “g,” “h”).

(1) There should be no additional adult cardiovascular surgery units initiated unless each existing unit within the project's service area is operating at a minimum of 200 open heart surgery cases per year.

(2) There should be no additional pediatric cardiovascular surgery units initiated, unless each existing unit within the project's service area is operating at 100 surgeries per year. (If one team serves more than one institution, the numbers for those institutions should be combined.)

(3) If the annual utilization of the other cardiovascular surgery units within the area is below the above-noted levels, future utilization above that current level must be reasonably projected or reasons for permanently utilizing the equipment below the level must be demonstrated.

(4) The applicant will demonstrate that an attempt was made to determine with the cooperation of existing providers whether such a reduction would occur. Existing providers of consequence are generally within two hours surface travel time for adult services and within three for pediatric services.

c. Minimum utilization—cardiac catheterization (Iowa Code section 135.64(1) “c,” “d,” “g,” “h”).

(1) Adult cardiac catheterization laboratories should be projected to operate at a minimum of 300 catheterizations per annum.

(2) Pediatric catheterization laboratory units should project a minimum of 150 catheterizations annually.

(3) Combined units should meet each of the adult and pediatric standards.

(4) Applicant should project utilization of cardiac catheterization units based upon service area population demographics, current regional or national utilization rates of the service, disease incidence and prevalence rates, current cardiac care treatment modes, and in consideration those adult cardiovascular surgery units currently operating in Iowa and bordering states within the project's service area.

d. Expansions—cardiac catheterizations (Iowa Code section 135.64(1) “c,” “d,” “e,” “g,” “h”).

(1) There should be no additional adult cardiac catheterization unit opened unless the number of studies per year in each existing unit within the project's service area is greater than 300. No additional pediatric unit should be opened unless the number of studies per year in each existing unit within the project's service area is greater than 150.

(2) If the annual utilization of the other cardiovascular surgery units within the area is below the above-noted levels, future utilization above that current level must be reasonably projected or reasons for permanently utilizing the equipment below the level must be demonstrated.

(3) The applicant must attempt and demonstrate that an attempt was made to determine with the cooperation of existing providers whether such a reduction would occur. Existing providers of consequence are those generally within two hours surface travel time for adults or three hours for pediatrics.

203.1(4) Costs.

a. Financial feasibility. (Iowa Code section 135.64(1) “f,” “i,” “p”) Cardiovascular surgery and catheterization equipment, and associated remodeling or construction should be depreciated over a period consistent with generally accepted accounting standards.

b. Cost-effectiveness. Proposed new or replacement cardiac catheterization laboratories cost per catheterization and cardiovascular surgery services estimated costs per surgery should, when compared to their peers, demonstrate cost-effectiveness.

203.1(5) Accessibility. (Iowa Code section 135.64(1) “c,” “d”)

a. Cardiovascular surgery units and cardiac catheterization labs should be available to meet the needs of the communities that the units and labs are meant to serve.

b. Cardiac catheterization and cardiovascular surgery service should be provided regardless of ability to pay, in consideration of those programs available in the state that serve the medically indigent.

203.1(6) Quality. (Iowa Code section 135.64(1) “i,” “k”)

a. Each surgery unit and cardiac catheterization lab shall demonstrate a reasonable set of criteria that are used in selecting appropriate candidates for surgery and catheterization.

b. Staffing minimums.

(1) The open heart surgery team should minimally consist of:

1. At least two certified or board eligible cardiovascular surgeons for the first 75 to 130 pediatric open heart surgeries. If pediatric surgery is performed, one surgeon must have special training and experience in surgery for congenital cardiac defects.

2. A board certified or board eligible adult or pediatric cardiologist(s). The latter only if pediatric surgery is performed, the former only if adult surgery is performed.

3. Board certified or board eligible anesthesiologist with special training in the management of cardiovascular cases' respiratory care.

4. Radiologist trained in the cardiovascular field.

5. Pathologist familiar with cardiac problems.

6. Specially trained in heart disease surgical nursing staff.

7. Cardiopulmonary bypass pump technicians.

8. Other ancillary staff as needed.

(2) Each applicant will document that the proposed surgery unit can be so staffed when completed and operational.

c. Equipment and facilities. The applicant seeking to provide cardiovascular surgery should demonstrate that the following support services will be available:

(1) General X-ray diagnostic facilities and facilities for emergency X-rays on a 24-hour basis.

(2) A cardiac catheterization laboratory or angiography lab available on a 24-hour basis.

(3) A cardiographics laboratory, with facilities for recording the following tests: EKG, vector cardiogram, phonocardiogram, echocardiogram, and exercise stress testing.

(4) A supporting blood bank and hematology laboratory.

(5) A microbiology laboratory.

d. Cardiac catheterization labs serving infants and children should have biplane angiographic equipment, either cineangiographic or cut film. Pediatric cardiac catheterization labs should be supervised by board certified or board eligible pediatric cardiologists; adult cardiac catheterization labs should be supervised by a board certified or board eligible adult cardiologist.

203.1(7) Continuity. (Iowa Code section 135.64(1) "g," "h," "i," "k")

a. The applicant should demonstrate that an attempt was made to solicit letters of support from area hospitals and physicians to indicate a community need.

b. The applicant should provide documentation that emergency medical transport services will be available.

c. Institutions providing cardiovascular surgery services should include mechanisms for comprehensive medical follow up including adequate medical records exchange.

203.1(8) Acceptability. (Iowa Code section 135.64(1) "c") Facilities with cardiovascular surgery and cardiac catheterization indicate a willingness to observe and respect the rights of patients.

641—203.2(135) Radiation therapy standards.

203.2(1) Purpose and scope.

a. These standards provide guidelines to assist the council in applying those criteria in Iowa Code sections 135.64(1) "a" to "r" and 135.64(3). Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these radiation therapy standards include:

(1) Proposals to commence or expand the kind or capacity of megavoltage radiation therapy services.

(2) Proposals to replace a megavoltage radiation therapy unit.

(3) Any other applications that relate to megavoltage radiation therapy.

203.2(2) Definitions.

"Conjoint radiation oncology center" or "cancer center" means a multi-institution, multidisciplinary network to provide radiation therapy for cancer patients. Integration of patient care management, common utilization of personnel and equipment, and a single system of records between center institutions ensures optimal care regardless of entry portal.

“*Dosimetrist*” means a staff member who calculates, verifies, and develops treatment plans for the radiation dose distributions that will be delivered to patients. The dosimetrist is an essential member of the treatment planning team and works closely with radiation oncologists and radiation physicists.

“*Megavoltage therapy*” means the use of ionizing radiation in excess of one million electron volts. Energies above one million electron volts cause considerably less skin damage, increase depth dose markedly, and result in much less scatter from the therapeutic beam. Megavoltage machines are classified as follows:

1. **Electron accelerator.** A machine such as a linear accelerator that uses a supply of electrons, which are accelerated into high energy beams. These electron beams are either caused to strike a target resulting in high energy X-ray production or are used themselves as the treatment beam. Electron accelerators generate over one million electron volts.

2. **Heavy Particle Accelerator.** A machine such as a cyclotron that produces beams of high energy particles such as protons, neutrons, pions, carbon ions, or other heavy ions with masses greater than that of an electron.

3. **Isotope sources (gamma ray teletherapy units).**

Cobalt 60 units—emit gamma rays of approximately 1.2 million electron volts.

“*Megavoltage therapy unit*” means a piece of megavoltage therapeutic radiologic equipment that provides megavoltage therapy.

“*New occurrence*” means a course of treatment for a new occurrence on a given patient at a given radiation therapy facility. First-time radiation therapy at a new facility is based on each round of treatment.

“*Radiation modality*” means the method of applying ionizing radiation in the treatment of patients with malignant disease using megavoltage external beam equipment.

“*Radiation oncologist*” means a physician authorized user trained in accordance with 641—subrule 41.3(5).

“*Radiation therapy facility*” or “*facility*” means the physical space that houses a megavoltage therapy unit and accompanying support equipment.

“*Radiation therapy physicist*” means an individual who works closely with radiation oncologists and is responsible for the safe and accurate delivery of radiation to patients. A radiation therapy physicist conducts quality control programs for the equipment and procedures, as well as calibrating the equipment. A radiation therapy physicist shall practice in accordance with 641—subrule 41.3(6).

“*Radiation therapy technologist*” means an individual who possesses an Iowa permit to practice as a radiation therapist in accordance with rule 641—42.7(136C).

“*Service area*” means the county in which the facility is located and any other counties from which the applicant expects to draw patients with a cancer diagnosis who are in need of radiation therapy treatment.

“*Simulation*” means the precise mock-up of a patient treatment with an apparatus that uses planar X-rays, magnetic resonance imaging device, or computed tomography scanner, which is used in reproducing the two-dimensional or three-dimensional internal or external geometry to the patient, for use in treatment planning and delivery.

“*Superficial X-ray therapy*” means the use of a conventional X-ray machine, which generates X-rays of up to 150 kilovolts (150 kv), to treat superficial lesions, such as skin cancer.

“*Treatment*” means radiation fields applied in a single patient visit fraction or delivery session.

203.2(3) Availability.

a. Minimum utilization. (Iowa Code section 135.64(1) “c,” “g,” “h”)

- (1) A megavoltage radiation therapy unit and cobalt units should treat at least 250 new occurrences annually within three years after initiation of the service.

- (2) The expected number of new occurrences needing megavoltage radiation therapy annually in a service area should be calculated as follows:

1. Multiply the service area population times 0.00582 (5.82/1,000 population was the mean cancer incidence rate in 2017 in Iowa as filed by the Surveillance, Epidemiology, and End Results (SEER) Program).

2. Multiply this product times .5 (50 percent of all new occurrences receive radiation therapy).
- (3) The expected volume of utilization sufficient to support the need for a new megavoltage therapy unit should be calculated as follows: each unit shall provide a minimum of 5,000 treatments per annum. Megavoltage treatments should be projected by multiplying the number of projected new occurrences needing megavoltage therapy times 20, which will result in no fewer than 5,000 treatments per annum.
- (4) Applicants shall account for other providers of radiation therapy in the service area including, but not limited to, factors such as technological capability and quality. Applicants shall address in their application other providers and the impact on those providers in the service area and compare technological capability and quality.
- (5) Applicants should provide a map of the expected service area.
- (6) Institutions that form a conjoint oncology center should have at least 500 new occurrences annually.

b. Simulator availability. A simulator should be available within a radiation oncology department.

203.2(4) Accessibility. (Iowa Code section 135.64(1) “c,” “d”) Radiation therapy services should be provided regardless of ability to pay, in consideration of those programs available in the state that serve the medically indigent.

203.2(5) Quality. (Iowa Code section 135.64(1) “i,” “k”)

a. Minimum staffing requirements for radiation therapy facilities:

- (1) Each facility will have the services of at least one radiation oncologist.
 - (2) Each facility will have the services of at least one radiation therapy physicist.
 - (3) Each facility will have the services of radiation therapy technologists that should be staffed at a level of two technologists per megavoltage unit.
 - (4) Each facility should have the services of nurses.
 - (5) Each facility should have the services of at least one dosimetrist.
 - (6) Each facility should have the services of one radiation therapist or radiation technologist competent to operate a CT simulator.
- b.* Each conjoint center will have at least two cancer biologists available.
- c.* Each conjoint center will have one radiation technologist available for each simulator.
- d.* The long-range plans for radiation therapy services shall be submitted to the Iowa department of public health.
- e.* Multidisciplinary tumor boards should be established in all institutions housing megavoltage machines.
- f.* A source of continuing education should exist within each conjoint center to reach participating community referral hospitals and physicians.
- g.* Each conjoint center should have a unified training program in radiation therapy for radiation oncologists.
- h.* Each radiation therapy facility should offer psychosocial counseling services and nutritional counseling.

203.2(6) Continuity. (Iowa Code section 135.64(1) “g,” “h,” “i,” “k”) The applicant should demonstrate that an attempt was made to solicit letters of support from area hospitals and physicians to indicate community need.

641—203.3(135) Computerized tomography standards.

203.3(1) Purpose and scope.

a. These standards are measures of some of those criteria in Iowa Code section 135.64(1) “a” to “l.” Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these computerized tomography standards include:

- (1) Proposals to commence or expand the capacity of computerized tomography services.
- (2) Any other applications that relate to computerized tomography services.

203.3(2) Definitions.

a. Computerized tomographic (CT) scanner—a diagnostic tool that rotates about and that sends X-ray beams through the body or brain. The X-ray beams that emerge from the body or brain are absorbed by a detector. Differences in the amount of X-rays absorbed by the detector indicate differences in tissue density. As the scanner rotates it takes many images of volume or a cross-section. The images on the detector are transmitted to a computer that displays on a monitor a reconstructed cross-sectional slice or volume. Contrast media is often injected to alter absorption of the detector. If the scan is repeated it is called enhancement. Studies of the heart, arteries and veins may be done with contrast only.

(1) Whole body scanner—one capable of imaging the entire body.

(2) Head scanner—one capable of imaging only the brain and structures adjacent to the head.

b. Enhanced scan—a scan performed on a patient who has been administered a contrast medium so that specific organs or areas of the body will be displayed more distinctly on the scan image.

c. Minimum shared-market area for a scanner (hereafter referred to as “area”)—the smallest geographic area within which any scanner installation is judged to affect the utilization rate of any other scanner is the community (as defined by the U.S. Bureau of the Census) or a Standard Metropolitan Statistical Area (where an area is so designated).

d. Emergency medical service (EMS) level II trauma service—the level of various services and staffing that qualify a facility to be designated by the emergency medical service division of the Iowa department of public health, using the facilities categorization criteria of such services that is in effect on the date of the enactment of this standard.

e. Shared service agreements—a multi-institutional arrangement for coordination or consolidation of services or sharing of support services. Among the various types of arrangements are referred services, purchased or joint contract services, multisponsored services and regional services.

f. CT consortia—a cooperative venture in which two or more institutions form a separate entity that is created for the purpose of owning, leasing, planning for, and maintaining the use of the scanner. Each facility in the consortium maintains its autonomy for all other services.

g. Applicant—an applicant may be a facility or a consortium of facilities within an area, or a physician or group of physicians.

h. General imaging procedures—a radiological diagnostic procedure performed on an X-ray machine or similar radiological diagnostic instrument.

i. Active oncology service—full, multidisciplinary cancer care, provided by a medical team that would include: surgery, gynecology, medical oncology, radiation oncology, pathology, diagnostic radiology and nuclear medicine. The surgery specialties that might be available would include: thoracic, abdominal, genitourinary and gynecological. The active oncology staff would include those specialists with training in oncology, hematology, and pathology and who spend at least half of their time at the institution.

j. Radiotherapy service—the therapeutic application of megavoltage radiation, using a linear accelerator or cobalt unit. The availability of such service at a hospital would necessitate personnel trained in the therapeutic application of radiology.

k. Chemotherapy service—the treatment of cancer by chemical agents.

203.3(3) Determination of need.

a. Applicants who do not now have a scanner, or who have a scanner and seek a certificate for one or more additional scanners.

(1) Applicants in areas with no other scanners.

1. Applicants must have performed at least 30,000 general imaging procedures during the past calendar year or 12 months, or

2. Demonstrate that during the past calendar year or 12 months, the applicant performed diagnostic procedures equivalent to 1,500 HECTs, using the following: 100% of the number of patients referred to other facilities for CT diagnosis \times 1.75 (in the case of head scans) and 2.75 (in the case of body scans).

(2) Applicants in areas with one or more scanners.

1. An applicant must meet the requirement of need, described in Iowa Code section 203.4(3) “a”(1).

2. The average level of utilization for scanners within the area was at least 3,000 HECTs (plus or minus 10 percent) for the past calendar year or 12 months. The average level of utilization will be determined by adding the number of HECTs performed during the period at all area facilities divided by the number of facilities.

3. The University of Iowa Hospitals and Clinics is specifically exempted from consideration under paragraph “2” directly above, because it has a service area that encompasses the entire state and adjoining states. The utilization statistics for the University Hospital will therefore neither affect nor be affected by Mercy Hospital, Iowa City. Additionally, the utilization statistics for scanners at the University of Nebraska Hospitals and Clinics and St. Joseph’s Hospital (both in Omaha) will not affect the need for scanners at hospitals in Council Bluffs.

b. Replacement scanners—applicants who currently have a scanner.

(1) All applicants seeking to replace a scanner with another scanner, head or body.

1. The applicant must demonstrate that the applicant’s use of the applicant’s current scanner was at least at the operating capacity level during the last calendar year or 12 months, or

2. Below the operating capacity level, but above 1,500 CT scan level, and the applicant must demonstrate reasons for permanently utilizing their scanner below operating capacity level and demonstrate that discontinuation of their scanner service would impair the applicant’s ability to respond to the emergency needs of the area. Reasons for utilizing the scanner below the capacity should include a unique patient or procedure mix that would define the capacity level differently for this applicant.

(2) Reserved.

203.3(4) Costs—whole body and head scanners.

a. *Financial feasibility.* (Iowa Code section 135.64(1) “f,” “i,” “p”) CT scanners should be depreciated over a period of not less than seven years. Remodeling shall be depreciated as appropriate by generally accepted accounting principles.

b. Cost-effectiveness.

(1) Applicants should demonstrate for themselves and the health care system that the most cost-effective method of providing CT services has been chosen.

(2) Proposed new and replacement CT scanner’s cost per CT scan should, when compared to their peers, demonstrate cost-effectiveness.

203.3(5) Accessibility. (Iowa Code section 135.64(1) “c,” “d”)

a. All scanners must be available to meet the needs of the communities the scanners are meant to serve.

b. Services should be provided to all patients regardless of the patient’s ability to pay, taking into consideration the availability of those programs available in the state that serve the medically indigent.

c. Applicants will demonstrate a willingness to accept referrals for CT services from all area physicians.

203.3(6) Quality. (Iowa Code section 135.64(1) “i,” “k”)

a. Data on use and costs of the CT scanners should be submitted to the Iowa department of public health as a condition of approval. (Iowa Code section 135.64(1) “a,” “h”)

b. All scanners.

(1) All applicants must demonstrate that they have on their staff or will acquire on their staff a full-time diagnostic radiologist, trained in the use of the CT scanner, or other physicians with comparable training and expertise.

(2) All applicants must document that they have on their medical staff individuals who are qualified to operate a scanner and interpret and act upon the diagnostic results. Such documentation may include reference to board certification, apprenticeship, academic credentials or such other qualifications that would prompt a medical staff to accept the responsibility for offering this new service. Applicants who intend to acquire staff with the desired expertise should provide signed letters of intent from the incoming medical personnel. Applicants who intend to upgrade the specialty skills of their staff should document a plan for training their current staff in the use of CT scanners.

(3) All applicants should have a complement of other diagnostic modalities available. Applicants seeking body scanners should also have available ultrasound and conventional X-ray services.

(4) All applicants should have the facilities for treating the conditions diagnosed by imaging with the scanner or should demonstrate referral agreements with treatment facilities, in the event that the scanner will be used as a screening device.

(5) All applicants should have on their staff or available on a consultative basis the services of a biomedical engineer or medical physicist, with special training in CT applications. These functions may also be provided by contract with the scanner manufacturer.

203.3(7) Continuity. (Iowa Code section 135.64(1) “g,” “h,” “i,” “k”)

a. The applicant should demonstrate that an attempt was made to solicit letters of support from area hospitals and physicians to indicate a community need for the proposed service.

b. The applicant should provide documentation that emergency medical transport services will be available.

c. The applicant should demonstrate an emphasis on the availability of outpatient CT procedures, and that an appropriate percentage of all CT procedures on head and whole body units will be done on an outpatient basis.

203.3(8) Acceptability. (Iowa Code section 135.64(1) “k”) Providers of CT services should indicate a willingness to observe the rights of patients.

641—203.4(135) Long-term care.

203.4(1) Purpose and scope.

a. These standards are measures of criteria found in Iowa Code section 135.64(1) “a” to “g.” Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these standards include applications to:

(1) Construct, develop, offer new, modernize, replace, renovate, or relocate intermediate care or skilled nursing care beds in nursing homes or hospitals.

(2) Expand bed capacity in intermediate care or skilled nursing care facilities or designated units in hospitals.

203.4(2) Definitions.

“Intermediate care facility” or “ICF” means any institution, place, building, or agency providing for a period exceeding 24 consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity require nursing services that can be provided only under the direction of a registered nurse or a licensed practical nurse.

“Rural counties” means all counties not designated by the U.S. Census as SMA (Standard Metropolitan Area) counties.

“Skilled nursing facility” or “SNF” means any institution, place, building, or agency providing for a period exceeding 24 consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals not related to the administrator or owner thereof within the third degree of consanguinity who by reason of illness, disease, or physical or mental infirmity require continuous nursing care services and related medical services, but do not require hospital care. The nursing care services provided must be under the direction of a registered nurse on a 24-hour-per-day basis.

“Urban counties” means those counties designated by the U.S. Census as SMA (Standard Metropolitan Area) counties.

203.4(3) Availability and need. (Iowa Code section 135.64(1) “c,” “d,” “e,” “g,” “h”)

a. The following formula shall be used as a means of projecting the approximate number of intermediate and skilled nursing care beds needed to serve the projected population five years into the future:

(1) Rural counties:

$[\text{.09}(65 + \text{population}) + \text{.0015}(64 - \text{population})] \times 110\%$ equals total long-term care bed need

Combined SNF and ICF bed need equals $\frac{2}{3}$ (total long-term care bed need)

Assumed RCF bed need equals 1/3 (total long-term care bed need).

(2) Urban counties:

$[.07(65 + \text{population}) + .0015(64 - \text{population})] \times 110\%$ equals total long-term care bed need

Combined SNF and ICF bed need equals 2/3 (total long-term care bed need)

Assumed RCF bed need equals 1/3 (total long-term care bed need).

(3) Department of economic development population projections are adopted for use in the determination of long-term care bed need.

(4) The department of public health will calculate long-term care bed need figures annually, using population projections five years into the future.

b. For purposes of comparing “need” to “existing” beds in a given county, the following shall be considered in the calculation of “existing” beds:

(1) ICF and SNF beds licensed at freestanding facilities in the county.

(2) Additional ICF and SNF beds previously approved through certificate of need but not yet licensed.

(3) ICF and SNF beds in designated units in hospitals in the county.

c. The statistical calculation of bed need shall serve as a guideline for the health facilities council in reviewing need for the proposed long-term care beds. Other factors that may be considered by the council include, but are not limited to:

(1) The availability and utilization of other ICF and SNF services in the county, or within the applicant’s service area.

(2) The availability and utilization of other long-term care services in nearby hospitals, such as skilled care available through the swing bed program.

(3) The availability of supportive living arrangements that may or may not be licensed as residential care facilities (RCF).

(4) The availability of home health and other in-home services.

(5) The availability of other services to the elderly.

(6) The availability of ICF and SNF services in neighboring counties.

(7) Utilization by out-of-state residents of facilities in counties bordering other states, where the applicant provides evidence that in-migration of long-term care patients exceeds out-migration to the bordering state.

(8) Programs and services directed at special populations whose needs cannot otherwise be met, or whose needs cannot be met cost-effectively at other facilities.

d. In documenting need for a project, the applicant shall identify the service area and target population, including a description of the methodology used by the applicant in determining need for the requested beds and the expected sources of referrals. The applicant shall document that the number of beds requested is appropriate to address the identified need. The applicant shall also identify how the target population is currently being cared for, and what hardship is being experienced by the absence of the proposed beds.

203.4(4) Quality. (Iowa Code section 135.64(1) “i,” “k”) The applicant shall document that the applicant has contacted the health facilities division of the department of inspections, appeals, and licensing to conform with physical standards, staffing requirements, and other licensing requirements to assess the potential for provision of quality care at the facility. When necessary, the applicant shall attempt to arrange an on-site visit to the facility to determine compliance with physical requirements, and shall provide documentation of this site visit or attempts to arrange such a site visit.

203.4(5) Continuity. (Iowa Code section 135.64(1) “g,” “h,” “k”)

a. The applicant shall document the relationship of the facility’s proposed services to other health and long-term care services in the community such as physician and hospital services, habilitation, rehabilitation, transportation or other services. The facility should be capable of providing or arranging for the provision of a continuum of long-term care services.

b. The facility should be capable of providing or arranging for the provision of a comprehensive program of coordinated patient services. The applicant shall provide evidence of contracts for services, appropriate staffing patterns and ratios, and licensure of personnel as necessary.

203.4(6) Accessibility and acceptability. (Iowa Code section 135.64(1) “c,” “d”)

a. Population subgroups that have traditionally been underserved, such as adolescents, the elderly, women, racial minorities, mentally ill, intellectually disabled, and developmentally disabled should be considered when planning for or reviewing long-term care facilities.

b. The applicant shall document to what extent Medicaid patients will be served by the proposed beds, using past Medicaid utilization as an indicator or, in the case of a new facility, projecting anticipated Medicaid utilization.

203.4(7) Costs and financial feasibility. (Iowa Code section 135.64(1) “e,” “f,” “i,” “p”)

a. The applicant shall identify capital and operating costs associated with the project, identify sources of funding to cover those costs, and demonstrate that the project is financially feasible.

b. Construction costs shall be in line with construction costs of other similar projects.

c. The applicant shall provide budgets for the first three years of operation, including documentation of all assumptions used. The budget shall include anticipated sources of revenue, including the percentage of revenue from private pay, Medicaid, Medicare and other patient revenues.

d. Proposed charges per patient day should be justifiable when compared to current charges of other similarly licensed facilities in the applicant’s service area, or other similar facilities elsewhere in the state. If charges are significantly higher or lower, the applicant shall provide a description of proposed programs or services that explain the difference in charges.

These rules are intended to implement Iowa Code section 135.72.

641—203.5(135) Magnetic resonance imaging services standards.**203.5(1) Purpose and scope.**

a. These standards are measures of some of those criteria in Iowa Code section 135.64(1) “a” to “q.” Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these standards include:

- (1) Proposals to commence or expand the capacity of magnetic resonance imaging services.
- (2) Proposals to replace a magnetic resonance imaging unit.
- (3) Any other applications that relate to magnetic resonance imaging.

203.5(2) Definitions.

“Area” means the community or a metropolitan statistical area (as defined by the U.S. Office of Management and Budget and used by the U.S. Census Bureau).

“CT (computed tomography) procedure” means a CT study of a single site of anatomic interest during an individual patient visit.

“Magnetic resonance imaging (MRI)” means a diagnostic modality that employs a combination of magnetic and radio frequency fields and computers to produce images of body organs and tissues.

“MRI procedure” means each discrete MRI study of one patient.

“MRI unit” means the essential equipment and facility necessary to operate one MRI system.

203.5(3) Availability and need. (Iowa Code section 135.64(1) “c,” “d,” “e,” “g,” “h”)

a. Applicants in areas with no other MRI units. Applicants must document a future utilization of reasonably projected MRI procedure volume of at least 2,000 MRI procedures for the fiscal year period after projected installation.

b. Applicants in areas with one or more MRI units currently in operation or approved by certificate of need for operation.

(1) Applicant must meet the requirement of need described in Iowa Code section 203.12(3) “a.”

(2) The other MRI unit(s) within the area must have been operating at a minimum of 2,000 MRI procedures annually (or 500 in three months), or proportionately more if the MRI unit runs more than one ten-hour shift.

(3) If the annual utilization of the other MRI unit(s) within the area has been below 2,000 procedures, future utilization above that current level must be reasonably projected or reasons for permanently utilizing the equipment below the 2,000 procedure level must be demonstrated.

c. Applicants seeking to replace an MRI unit.

(1) The applicant must demonstrate that the existing MRI unit has been operating at the level of at least 2,000 procedures during the most recent annual period.

(2) If the applicant's annual utilization has been below 2,000 procedures, the applicant must reasonably project future utilization above that level or demonstrate reasons for permanently utilizing the equipment below that level.

d. Applicants seeking to add an additional MRI unit.

(1) The applicant must demonstrate that the existing MRI unit(s) has been operating at the level of at least 3,500 procedures during the most recent annual period.

(2) The applicant must demonstrate that the demand for an additional MRI unit significantly exceeds the 2,000 procedures annually.

(3) If the applicant's annual utilization of the existing MRI unit(s) has been below 3,500 procedures, the applicant must reasonably project future utilization above that level or demonstrate reasons for permanently utilizing the equipment below that level.

203.5(4) *Quality and continuity.* (Iowa Code section 135.64(1) "g," "h," "i," "k")

a. The proposed MRI unit should function as a component of a comprehensive inpatient or outpatient diagnostic service. The proposed MRI unit must have the following modalities on-site or through referral arrangements:

- (1) Ultrasound.
- (2) Computed tomography.
- (3) Angiography.
- (4) Nuclear medicine.
- (5) Conventional radiography.

b. The proposed MRI unit must be located in a facility that has, either in-house or through referral arrangement, the resources necessary to treat most of the conditions diagnosed or confirmed by MRI. The following medical specialties must be available during MRI service hours on-site or by referral arrangements: neurology or neurosurgery, oncology and cardiology.

c. A proposal to provide new or expanded MRI must include satisfactory assurances that the services will be offered in a physical environment that conforms to federal standards, manufacturer's specifications, and licensing agencies' requirements.

d. The applicant must provide evidence that the proposed MRI equipment has been certified for clinical use by the U.S. Food and Drug Administration or will be operated under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services regulations.

e. Applicants for MRI should document that the necessary qualified staff are available to operate the proposed unit. The following minimum staff shall be available to the MRI unit:

(1) A board eligible or board certified radiologist or any other board eligible or board certified licensed physician whose exclusive responsibility for at least a two-year period prior to submission of a certificate of need request has been in the acquisition and interpretation of clinical images. This individual shall have a knowledge of MRI through training, experience, or documented postgraduate education. The individual shall also have training with a functional MRI facility.

(2) Qualified engineering personnel, available to the institution during MRI service hours, with training and experience in the operation and maintenance of the MRI equipment.

(3) Diagnostic radiologic technologists or other certified technologists with expertise in computed tomography or other cross-sectional imaging methods, at a staffing level consistent with the hospital's expected MRI service volume.

(4) Other appropriate physicians shall be available during MRI service hours in clinical specialties such as neurology or neurosurgery, oncology and cardiology.

f. The applicant shall demonstrate how emergencies within the MRI unit will be managed in conformity with accepted medical practice.

203.5(5) *Accessibility and acceptability.* (Iowa Code section 135.64(1) "c," "d")

a. MRI facilities should have adequate scheduled hours to avoid an excessive backlog of cases and to meet the needs of the communities the scanners are meant to serve.

b. Selection of patients for clinical MRI studies must guarantee equal access to all persons regardless of insurance coverage or ability to pay.

203.5(6) Costs and financial feasibility. (Iowa Code section 135.64(1) “e,” “f,” “i,” “p”)

a. The applicant shall identify capital and operating costs associated with the proposed MRI unit, identify sources of funding to cover those costs, and demonstrate that the project is financially feasible.

b. The applicant shall provide budgets for the first three years of operation, including documentation and justification of all assumptions used.

c. The applicant must document its projected average cost per procedure and charge per procedure for the first three years. Charges for MRI should be reasonably related to service cost, and comparable to MRI charges at other facilities in the state.

d. The applicant shall demonstrate that alternatives were considered and the proposed application is the most cost-effective and will accomplish the goals of the project.

641—203.6(135) Positron emission tomography services standards.

203.6(1) Purpose and scope.

a. These standards are measures of some of those criteria in Iowa Code section 135.64(1) “a” to “q.” Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these standards include:

- (1) Proposals to commence or expand the capacity of positron emission tomography services.
- (2) Proposals to replace a positron emission tomography unit.
- (3) Any other applications that relate to positron emission tomography.

203.6(2) Definitions.

“Area” means the community or a metropolitan statistical area (as defined by the U.S. Office of Management and Budget and used by the U.S. Census Bureau).

“CT (computed tomography)” means an imaging method in which a cross-sectional image of the structures in a body plane is reconstructed by a computer program from the X-ray absorption of beams projected through the body in the image plane.

“Cyclotron” means an apparatus for accelerating protons or neutrons to high energies by means of a constant magnet and an oscillating electric field.

“MRI (magnetic resonance imaging)” means a diagnostic modality that employs a combination of magnetic and radio frequency fields and computers to produce images of body organs and tissues.

“Radiopharmaceutical” means a radioactive pharmaceutical used for diagnostic or therapeutic purposes.

“PET procedure” means an image-scanning sequence derived from a single administration of PET, equated with a single injection of the tracer.

“Positron emission tomography (PET)” means an imaging method in which positron-emitting radionuclides, which are produced either by a cyclotron or generator, and a nuclear camera are used to create pictures of organ function rather than structure.

“SPECT (single photon emission computed tomography)” means a camera-based imaging system using the radionuclides in the routine practice of nuclear medicine.

203.6(3) Availability and need. (Iowa Code section 135.64(1) “c,” “d,” “e,” “g,” “h”)

a. Applicants in areas with no other PET units.

(1) Applicants should demonstrate a reasonable potential utilization of a PET unit based on diversified inpatient and outpatient case mix thresholds including:

1. Intracranial cases
 - Primary brain tumors 50/year
 - Metastasis 100/year
 - Cerebral vascular disease 200/year
 - Organic brain disease and dementia/psychiatric diagnoses (including epilepsy-seizure disorders) 500/year
 - Spinal 100/year
2. Cardiovascular cases

- Ischemic heart disease (including acute and chronic infarction) 1,200/year
 - 3. Neoplasms (head, neck, thorax (excluding heart), abdomen, pelvic, prostate, and musculoskeletal 1,300/year
 - 4. If the application is for a basic unit, the above case mix and numbers should be adjusted according to the proposed use of the unit.
- (2) Applicants should have other diagnostic capabilities, on-site or through referral arrangements, with appropriate volumes including:

| | <u>Proposed Threshold</u> |
|--|---------------------------|
| Nuclear medicine imaging services | 5,600 |
| Single photon emission computed tomography (including brain, bone, liver, Gallium and Thallium stress) | 1,600 |
| CT | 8,000 |
| MRI | 2,400 |

(3) Applicants should demonstrate secondary and tertiary service capability, on-site or through referral arrangements, including cardiac surgery, cardiology, internal medicine, general surgery, hematology/oncology, neurology, pathology, thoracic surgery and psychiatry.

b. Applicants in areas with one or more PET units currently in operation or approved by the certificate of need program for operation.

(1) Existing PET units within the area (whether basic or enhanced) should have been operating at a minimum of 1,000 PET procedures during the most recent annual period as reported to the certificate of need program according to Iowa Code section 203.13(6)“*e.*”

(2) Reserved.

203.6(4) *Quality and continuity.* (Iowa Code section 135.64(1)“*g,*” “*h,*” “*i,*” “*k*”)

a. The proposed PET unit should function as a component of a comprehensive inpatient or outpatient diagnostic service. The proposed PET unit should have the following modalities (and capabilities) on-site or through referral arrangements:

- (1) Computed tomography.
- (2) Magnetic resonance imaging.
- (3) Nuclear medicine — (cardiac, SPECT).
- (4) Conventional radiography.

b. The proposed PET unit should be located in a facility that has, either in-house or through referral arrangement, the resources necessary to treat most of the conditions diagnosed or confirmed by PET. The following medical specialties should be available during PET service hours on-site or by referral arrangements: cardiology, neurology, neurosurgery, oncology, and psychiatry.

c. A proposal to provide new or expanded PET must include satisfactory assurances that services will be offered in a physical environment that conforms to federal standards, manufacturer’s specifications, and licensing agencies’ requirements. The following areas are to be addressed:

- (1) Quality control and assurance of radiopharmaceutical production of generator or cyclotron-produced agents;
- (2) Quality control and assurance of PET tomograph and associated instrumentation;
- (3) Radiation protection and shielding; and
- (4) Radioactive emissions to the environment.

d. The applicant will provide evidence that the proposed PET equipment has been certified for clinical use by the U.S. Food and Drug Administration or will be operated under the approval and authority of an institutional review board whose membership is consistent with U.S. Department of Health and Human Services regulations.

e. Applicants for PET will document that the necessary qualified staff are available to operate the proposed unit. The applicants will document the PET training and experience of the staff. The following minimum staff will be available to the PET unit:

(1) One or more nuclear medicine imaging physician(s) available to the PET unit who have been licensed by the state for the handling of medical radionuclides and whose primary responsibility for at least a one-year period prior to submission of the certificate of need application has been in acquisition and interpretation of tomographic images. This individual shall have knowledge of PET through training, experience, or documented postgraduate education. The individual shall also have training with a functional PET facility.

(2) Qualified PET radiochemist or radiopharmacist personnel, available to the facility during PET service hours, with at least one year of training. The individual(s) will demonstrate experience in the testing of chemical, radiochemical, and radionuclidic purity of PET radiopharmaceutical syntheses.

(3) Qualified engineering and physics personnel, available to the facility during PET service hours, with training and experience in the operation and maintenance of the PET equipment.

(4) Qualified radiation safety personnel, available to the facility at all times, with training and experience in the handling of short-lived positron-emitting nuclides.

(5) Certified nuclear medicine technologists with expertise in computed tomographic nuclear medicine imaging procedures, at a staffing level consistent with the proposed center's expected PET service volume.

(6) Other appropriate personnel will be available during PET service hours that may include certified nuclear medicine technologists, computer programmers, nurses, and radiochemistry technicians.

f. The applicant will demonstrate how emergencies within the PET unit will be managed in conformity with accepted medical practice.

203.6(5) Accessibility and acceptability. (Iowa Code section 135.64(1) "c," "d")

a. PET facilities should have adequate scheduled hours to avoid an excessive backlog of cases.

b. Selection of patients for clinical PET studies will guarantee equal access to all persons regardless of insurance coverage or ability to pay.

c. In addition to accepting patients from participating institutions, facilities performing clinical PET procedures should accept appropriate referrals from other local providers. These patients will be accommodated to the extent possible by extending the hours of service and by prioritizing patients according to standards of need and appropriateness rather than source of referral.

203.6(6) Costs and financial feasibility. (Iowa Code section 135.64(1) "e," "f," "i," "p")

a. The applicant will identify capital and operating costs associated with the proposed PET unit, identify sources of funding to cover those costs, and demonstrate that the project is financially feasible.

b. The applicant will provide budgets for the first three years of operation, including documentation and justification of all assumptions used.

c. The applicant will document its projected average cost per procedure and charge per procedure for the first three years. Charges for PET should be reasonably related to service cost and comparable to PET charges at other facilities in the state.

d. The applicant should verify whether the service is eligible for reimbursement by public and private third-party payers.

e. The applicant will demonstrate that alternatives were considered and the proposed application is the most cost-effective and will accomplish the goals of the project.

This rule is intended to implement Iowa Code section 135.64.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 61
“Fire Safe Cigarette Certification Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 101B.3(4)
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 101B and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 61, “Fire Safe Cigarette Certification Program,” and implements Iowa Code chapter 101B.3(4) in accordance with the goals and directives of Executive Order 10 (Jan. 10, 2023). The rulemaking establishes an application process and standards for payments, certification, test methods, and package marking for fire safe cigarettes. The rulemaking provides cigarette manufacturers with standards applicable to the certification of fire safe cigarettes. Consumers who purchase cigarettes are ensured that cigarettes certified as fire safe have gone through the testing and certification process outlined in these rules.

The rules also set forth the administrative process for enforcing Iowa Code chapter 101B and 661—Chapter 61, including the process for violations and penalties.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Cigarette manufacturers intending to sell their products in Iowa incur costs related to testing their products, retaining reports of testing, certification fees, and packaging.
 - Classes of persons that will benefit from the proposed rulemaking:
Consumers who purchase cigarettes in Iowa and cigarette manufacturers benefit from this rulemaking. The rulemaking provides cigarette manufacturers with standards applicable to certification of fire safe cigarettes. Consumers who purchase cigarettes are assured that cigarettes certified as fire safe have gone through the testing and certification process outlined in these rules.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Cigarette manufacturers intending to sell their products in Iowa incur costs related to testing their products, retaining reports of testing, certification fees, and packaging.

- Qualitative description of impact:

Implementing the requirements of Iowa Code chapter 101B ensures safety for the manufacturer and the consumer. The rulemaking provides cigarette manufacturers with standards applicable to certification of fire safe cigarettes. Consumers who purchase cigarettes are ensured that cigarettes certified as fire safe have gone through the testing and certification process outlined in these rules.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are staff time needed to ensure compliance with the requirements of Iowa Code chapter 101B and these rules. The Department has one staff member at 1.0 full-time equivalent (FTE) position who, among other duties, is responsible for the review of applications for certification. The staff member verifies that applications are complete and that the products meet statutory requirements. The staff member also processes payments of fees required for certification. An average of ten applications for certification are received each year; therefore, costs to the agency are minimal.

- Anticipated effect on state revenues:

Certification fees generated for cigarettes regulated under this chapter vary from year to year, depending on the product to be certified. On average, the Department collects \$33,000 in fees annually. Certification fees are established in Iowa Code section 101B.5(5). These fees go to the General Fund of the State.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This rulemaking implements statutory requirements set forth in Iowa Code chapter 101B. The rulemaking does not add costs to the Department or public in excess of what is required by Iowa Code chapter 101B.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less restrictive alternatives or less costly methods for the rules in Chapter 61 because the chapter implements requirements found in Iowa Code chapter 101B.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered by the agency because this rulemaking implements statutory requirements.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no alternative methods identified for this chapter because this rulemaking implements statutory requirements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Exempting small businesses from adhering to the rules would jeopardize public safety. The risk to the public would be greater than potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 61 and adopt the following **new** chapter in lieu thereof:

CHAPTER 61
FIRE SAFE CIGARETTE CERTIFICATION PROGRAM

661—61.1(101B) Definitions. For purposes of these rules, the following definitions apply:

“*Certified fire safe cigarette*” means a unique cigarette brand style that meets the following criteria:

1. The unique cigarette brand style has been tested in accordance with the test method prescribed in Iowa Code section 101B.4 or has been approved pursuant to Iowa Code section 101B.4.
2. The unique cigarette brand style meets the performance standard specified in Iowa Code section 101B.4 or has been approved pursuant to Iowa Code section 101B.4.
3. A written certification for the unique cigarette brand style has been filed by the manufacturer with the department and in accordance with rule 661—61.4(101B).
4. Packaging for the unique cigarette brand style has been marked in accordance with rule 661—61.5(101B).

“*Cigarette*” means a cigarette as defined in Iowa Code section 453A.1, but does not mean a tobacco product as defined in Iowa Code section 453A.1.

“*Department*” means the same as defined in Iowa Code section 101B.2(3).

“*Fire safe cigarette*” means a cigarette certified pursuant to this chapter.

“*Manufacturer*” means the same as defined in Iowa Code section 101B.2(4).

“*Sale*” means the same as defined in Iowa Code section 101B.2(8).

“*Unique cigarette brand style*” means a cigarette with a unique combination of the following:

1. Brand or trade name.
2. Style, such as light or ultra light.
3. Length.
4. Circumference.
5. Flavor, such as menthol or chocolate, if applicable.
6. Presence or absence of a filter.
7. Type of package, such as soft pack or box.

“*Wholesaler*” means the same as defined in Iowa Code section 101B.2(10).

661—61.2(101B) Certification and fee. A certification application and fee shall be submitted to the department online pursuant to Iowa Code section 101B.5. An application is incomplete unless all required information is submitted, including required attachments and fees. Applications will not be processed until complete.

661—61.3(101B) Test method, performance standard, test report. Unless otherwise excepted therein, each unique cigarette brand style submitted for certification under this chapter shall meet all of the criteria in Iowa Code section 101B.4.

61.3(1) Alternate test method. A manufacturer proposing an alternate test method and performance standard pursuant to this rule will submit such proposal to the department on a form provided by the department.

a. The department will approve or deny the proposed alternate test method and performance standard within 60 days of receipt of such proposal and will send notification of such approval or denial by certified mail, return receipt requested, to the address provided by the manufacturer.

b. The department may approve an alternate test method and performance standard if it is determined to be equivalent to the test method and performance standard prescribed in Iowa Code section 101B.4. If an alternate test method and performance standard is approved pursuant to this rule, the manufacturer may employ the alternate test method and performance standard to certify the cigarette in accordance with Iowa Code section 101B.4.

61.3(2) Acceptance of alternate test method approved by another state. A manufacturer proposing an alternate test method and performance standard approved by another state will use the procedure specified in subrule 61.3(1) and provide documentation verifying that the alternate test method and performance standard have been approved by another state as provided in Iowa Code section 101B.4(9).

61.3(3) Retention of reports of testing. A manufacturer shall maintain copies of all test reports pursuant to Iowa Code section 101B.4(10).

61.3(4) Testing performed or sponsored by the department. Testing performed or sponsored by the department will be conducted in accordance with Iowa Code section 101B.4.

61.3(5) Changes to the manufacture of a certified fire safe cigarette. If a manufacturer with any cigarette certified under this chapter makes any changes to the cigarette thereafter, retesting of the cigarette may be required in accordance with Iowa Code section 101B.5(6).

661—61.4(101B) Notification of certification. A manufacturer or wholesaler shall provide copies of certifications pursuant to Iowa Code section 101B.6.

661—61.5(101B) Marking fire safe cigarette packaging. Cigarettes that have been certified in accordance with Iowa Code section 101B.5 shall be marked as provided in Iowa Code section 101B.7. The recommended marking is the letters “FSC” displayed in accordance with any of the methods described in Iowa Code section 101B.7.

661—61.6(17A) Violations and penalties. A person who violates any provision of Iowa Code chapter 101B or of this chapter is subject to a civil penalty of an amount no greater than specified by Iowa Code section 101B.8. Notice of a civil penalty will be provided by mail or by personal service. A person subject to a civil penalty may appeal the imposition of the penalty by requesting a contested case hearing, in writing, within 20 days. An appeal of a civil penalty is subject to the provisions of 481—Chapters 9 and 10 governing contested cases.

These rules are intended to implement Iowa Code chapter 101B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 235
“Licensing for Commercial Explosive Contractors and Blasters”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 101A.5 and 272C.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 101A and 17A and section 272C.12

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10:00 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 235, “Licensing for Commercial Explosive Contractors and Blasters,” and establishes a commercial explosive licensing program pursuant to Iowa Code chapter 101A. The proposed rules outline the entities and individuals who are required to obtain a license and explain the application process and conditions that must be satisfied to obtain a commercial explosive contractor license or a commercial explosive blaster license. The proposed rules inform licensees and the public of the procedure for submitting complaints and the reasons for which a license may be denied, suspended or revoked and the process by which the decision may be appealed. Pursuant to Iowa Code section 272C.12, the proposed rules also explain the process and requirements for licensure of persons licensed in other jurisdictions.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs to the public. Applicants and licensees bear the cost of fees for initial licensure and renewals. Applicants or licensees whose licenses are denied, suspended or revoked may incur costs related to civil penalties or court costs to appeals. Licensees may incur costs for the retention of records as required by the rules.

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 101A, including licensure criteria, the investigation of complaints, and processing violations.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this rulemaking. The rulemaking ensures the safety of the public by licensing commercial explosive contractors and blasters. Licensees benefit from clear and consistent application of standards applicable to the industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Applicants and licensees bear the cost of fees for initial licensure and renewals, which are established in Iowa Code section 101A.2(2). Applicants or licensees whose licenses are denied, suspended or revoked may incur costs related to such proceedings or the costs of an appeal. Licensees may incur costs for the retention of records as required by the rules.

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 101A, including licensure criteria, the investigation of complaints, and processing violations.

The Department has one staff member at 1.0 full-time equivalent (FTE) position who, among other duties, is responsible for the review of each license application. The staff person verifies that applications are complete and that applicants meet statutory requirements for education and experience. The staff person also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies since the license term is January 1 of the year of issue through December 30, three years from issue, and the license fees are prorated by the month. The average number of license applications processed per year is 130 and the average fees collected per year total \$55,000. Most complaints relate to unlicensed contractors or blasters. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Qualitative description of impact:

Implementing the requirements of Iowa Code chapter 101A ensures safety for licensees and the general public. The proposed rules primarily provide procedural guidelines implementing Iowa Code chapter 101A and do not significantly impact licensees beyond ensuring that the safety goals and substantive requirements of Iowa Code chapter 101A are enforced.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 101A, including licensure criteria, the investigation of complaints, and processing violations, and are fully set forth above in the quantitative description of the impact.

- Anticipated effect on state revenues:

Pursuant to Iowa Code section 101A.12, fees collected in issuing licenses are deposited in the state General Fund. Notably, all fees are set forth in Iowa Code chapter 101A and are not prescribed in rule. In 2022, \$147,254.46 in fees was collected and deposited to the state General Fund.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This rulemaking implements statutory requirements set forth in Iowa Code chapter 101A. The rulemaking does not add costs to the Department or public in excess of what is required by Iowa Code chapter 101A.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less restrictive alternatives or less costly methods because the rules implement requirements found in Iowa Code chapter 101A.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

There are no alternative methods that were considered by the agency because this rule implements statutory requirements.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There are no alternative methods that were considered by the agency because this rule implements statutory requirements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety and the appropriate qualifications for licensees, many of whom may be operating small businesses. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from a small business. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 235 and adopt the following **new** chapter in lieu thereof:

CHAPTER 235

LICENSING FOR COMMERCIAL EXPLOSIVE CONTRACTORS AND BLASTERS

661—235.1(101A) Definitions. Definitions set forth in Iowa Code section 101A.1 are incorporated herein by reference. For purposes of these rules, the following definitions also apply:

“Actual possession” means when a person is in immediate possession or control of explosive materials (e.g., an employee who physically handles explosive materials as part of the production process; or an employee, such as a blaster, who actually uses explosive materials).

“Applicant” means an individual employed by a commercial explosive contractor or person associated with a commercial explosive contractor who meets the definition of “employee possessor” or “responsible person” as defined in this chapter.

“Commercial explosive blaster” or *“blaster”* means any individual who conducts blasting or is in charge of or responsible for loading or detonation of any explosive material.

“Commercial explosive contractor” or *“contractor”* means any business whose employees are engaged in the manufacture, importation, distribution, sale, or commercial use of explosives in the course of their employment.

“Constructive possession” means when an employee lacks direct physical control over explosive materials but exercises dominion and control over the explosive materials, either directly or indirectly through others (e.g., an employee at a construction site who keeps keys for magazines in which explosive materials are stored, or who directs the use of explosive materials by other employees; or an employee transporting explosive materials from a licensee to a purchaser).

“Employee possessor” means an individual who has actual or constructive possession of explosive materials during the course of the individual’s employment.

“Offense directly relates” refers to either of the following:

1. The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession.
2. The circumstances under which an offense was committed are circumstances customary to a licensed profession.

“Responsible person” means an individual who has the power to direct the management and policies of the commercial explosive contractor pertaining to explosive materials. For example, responsible persons generally include sole proprietors and explosives facility site managers. In the case of a corporation, association, or similar organization, responsible persons generally include corporate directors and officers, as well as stockholders who have the power to direct management and policies.

661—235.2(101A) Licenses required. Except as specifically exempted by another provision of state or federal law, any business whose employees are engaged in the manufacture, importation, distribution, sale, or commercial use of explosives in the course of their employment shall be required to hold a current commercial explosive contractor license issued pursuant to this chapter. Any individual, except as specifically exempted by another provision of law, who conducts blasting or is in charge of or responsible for loading or detonation of any explosive material shall be required to hold a current commercial explosive blaster license issued pursuant to this chapter. A commercial explosive blaster license is not required to authorize a person solely to transport explosives from one location to another, to assist a licensed blaster, to train under a licensed blaster, or to engage in the manufacture of explosives.

NOTE: Iowa Code section 101A.1 excludes “fireworks” from the definition of “explosive.” Consequently, working with fireworks does not necessitate a blaster license, nor does the manufacture, importation, distribution, sale, or commercial use of fireworks necessitate a commercial explosive license.

661—235.3(101A,272C) License application process.

235.3(1) Application for commercial explosive contractor or commercial explosive blaster license. Applications for a commercial explosive contractor license or a commercial explosive blaster license are available on the department’s website. The application shall be filed no later than 30 days prior to the date of beginning work in this state or on which an existing license expires.

235.3(2) Submission of application and required information. A completed application for a license shall be submitted to the department at the address specified on the department’s website. An application will not be considered complete unless all required information is submitted, including required attachments and fees, and will not be processed until it is complete.

235.3(3) License fee. Each license application shall be accompanied by a license fee as set forth in Iowa Code section 101A.2(2). The department will waive any fee charged to an applicant for a license if the applicant’s household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

235.3(4) License duration. Licensure will normally be for three years and expire on December 31 of the third year after it is issued, except that a license issued in December of any year expires on December 31 after two years have passed from the date on which the license was issued.

235.3(5) Criminal history. An applicant is subject to a national criminal history check pursuant to Iowa Code section 101A.2(3).

235.3(6) Veterans and military service members. Any individual while serving honorably on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1, applying for licensure as a commercial explosive contractor or blaster should apply for licensure in accordance with 481—Chapter 7.

661—235.4(101A) Issuance of commercial explosive contractor license. A commercial explosive contractor license will be issued if all of the following conditions have been satisfied:

235.4(1) All items required on the application have been completed, and any items the department deems necessary to verify have been appropriately verified.

235.4(2) No applicant for whom commercial explosive licensure is sought nor any person who will have, at any time, possession of explosives in the course of employment with the prospective contractor licensee may:

- a.* Have been convicted of any offense involving explosives or firearms;
- b.* Have been previously disqualified from being licensed to handle explosives in this or any other state. The department may grant a license to a person previously disqualified if the department is satisfied that the condition or conditions that led to the disqualification have been corrected;
- c.* Be an unlawful user of or be addicted to controlled substances;
- d.* Have been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder which impairs a person's capacity to function normally and safely, both toward themselves and others.

235.4(3) The applicant has at least one responsible person or employee licensed as a commercial explosive blaster.

661—235.5(101A) Issuance of a commercial explosive blaster license. A commercial explosive blaster license will be issued if all of the following conditions have been satisfied:

235.5(1) The applicant is an employee of a licensed commercial explosive contractor.

a. If, after a commercial explosive blaster license is issued, such employment ceases, the employing contractor and the commercial explosive blaster shall each notify the department within three business days of the final day of employment that the employment has ceased, and the commercial explosive blaster license shall be suspended until the commercial explosive blaster is again employed with a licensed commercial explosive contractor.

b. Upon reemployment, the employer shall notify the department that the commercial explosive blaster is again employed with a licensed commercial explosive contractor, and the department will reinstate the commercial explosive blaster license as soon as practical, provided that the commercial explosive blaster is not disqualified from holding a license pursuant to any provision of this chapter.

c. If the department finds that a commercial explosive blaster is disqualified from holding a license, the department shall revoke the license.

235.5(2) All items required on the application have been completed and any items the department deems necessary to verify have been verified and found to be true.

235.5(3) The applicant is not or has not been:

- a.* Convicted of any offense involving explosives or firearms;
- b.* Previously disqualified from being licensed to handle explosives in this or any other state. The department may grant a license to a person previously disqualified if the department is satisfied that the condition or conditions that led to the disqualification have been corrected;
- c.* An unlawful user of or addicted to controlled substances;
- d.* Adjudged mentally incompetent at any time by any court or committed by any court to any mental institution; or
- e.* A recipient of inpatient treatment for any mental illness in the past three years or a recipient of treatment by a health care professional for a serious mental illness or disorder which impairs a person's capacity to function normally and safely toward themselves or others.

235.5(4) The applicant has satisfactorily completed training approved by the department for the handling and use of explosives as described on the department's website. The training may be provided by the employer or by a reputable third party knowledgeable about the storage, handling, and use of explosives. The department may accept related job experience of 640 hours or more in lieu of training if the experience is documented by a sworn affidavit provided by the employing commercial explosive contractor licensee.

EXCEPTION: The department may issue a commercial explosive blaster license to a person licensed or certified as a blaster in another state, provided that the department finds that the requirements for licensing or certification in the other state are comparable to those provided for in this rule.

235.5(5) An applicant for a renewal license has completed continuing education from a nationally recognized institution in professional explosives storage, handling, and use.

235.5(6) The applicant is 21 years of age or older.

661—235.6(272C) Licensure of persons licensed in other jurisdictions.

235.6(1) For the purposes of this rule, “issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

235.6(2) Notwithstanding any other provision of law, a commercial explosive contractor license or commercial blaster license will be issued without an examination to a person who establishes residency in this state or to a person who is married to an active duty member of the military forces of the United States and who is accompanying the member on an official permanent change of station to a military installation located in this state if all of the following conditions are met:

a. The person is currently licensed by at least one other issuing jurisdiction as a commercial explosive contractor or commercial blaster with a substantially similar scope of practice and the license is in good standing in all issuing jurisdictions in which the person holds a license.

b. The person has been licensed by another issuing jurisdiction for at least one year.

c. When the person was licensed by the issuing jurisdiction, the issuing jurisdiction imposed minimum educational requirements and, if applicable, work experience, and the issuing jurisdiction verifies that the person met those requirements in order to be licensed in that issuing jurisdiction.

d. The person previously passed an examination required by the other issuing jurisdiction for licensure, if applicable.

e. The person has not had a license revoked and has not voluntarily surrendered a license in any other issuing jurisdiction or country while under investigation for unprofessional conduct.

f. The person has not had discipline imposed by any other regulating entity in this state or another issuing jurisdiction or country. If another jurisdiction has taken disciplinary action against the person, the department shall determine if the cause for the action was corrected and the matter resolved. If the department determines that the matter has not been resolved by the jurisdiction imposing discipline, the department shall not issue or deny a license to the person until the matter is resolved.

g. The person does not have a complaint, allegation, or investigation pending before any regulating entity in another issuing jurisdiction or country that relates to unprofessional conduct. If the person has any complaints, allegations, or investigations pending, the department shall not issue or deny a license to the person until the complaint, allegation, or investigation is resolved.

h. The person pays all applicable fees.

i. The person does not have a criminal history that would prevent the person from holding the commercial explosive contractor license or commercial blaster license applied for in this state.

235.6(3) A person licensed pursuant to this rule is subject to the laws regulating the person’s practice in this state and is subject to the jurisdiction of the department marshal.

235.6(4) This rule does not apply to any of the following:

a. The ability of the department to require the submission of fingerprints or completion of a criminal history check.

b. The ability of the department to require a person to take and pass an examination specific to the laws of this state prior to issuing a license. If the department requires an applicant to take and pass an examination specific to the laws of this state, the department will issue an applicant a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months.

235.6(5) Except as provided in subrule 235.7(2), a person applying for a license in this state who relocates to this state from another state that did not require a license to practice as a commercial explosive contractor or commercial blaster may be considered to have met any education, training, or work experience requirements imposed by the department in this state if the person has three or more

years of related work experience with a substantially similar scope of practice within the four years preceding the date of application as determined by the department.

235.6(6) A person applying for a license in this state under the requirements of this subrule shall submit the request in writing to the department providing proof of residency in this state and documentation to verify all conditions are met under this subrule.

661—235.7(101A) Inventory and records. Each licensed commercial explosive business shall maintain records as referenced in the National Fire Protection Association (NFA) chapter 495, “Explosive Materials Code,” as adopted by reference in rule 661—231.1(101A).

661—235.8(101A) Complaints. Complaints regarding the performance of any licensed contractor or blaster, failure of a licensed contractor or blaster to meet any of the requirements established in Iowa Code chapter 101A or this chapter or any other provision of law, or operation as a commercial explosive contractor or commercial blaster without licensure may be filed with the department. Complaints should be as specific as possible and clearly identify the contractor or blaster against whom the complaint is filed. Complaints should be submitted in writing to the department as indicated on the department’s website. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant may be notified of the disposition of the complaint.

661—235.9(101A,252J) Grounds for suspension, revocation, or denial of commercial explosive licenses; appeals.

235.9(1) The department may refuse to issue a contractor or blaster license sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

a. Finding that the applicant or licensee is disqualified by any provision of federal or Iowa law from possessing explosives, firearms, or offensive weapons.

b. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.

c. Finding that the applicant or licensee falsified information in the current or any previous license application.

d. Finding that the applicant or licensee has been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder which impairs a person’s capacity to function normally and safely, both toward themselves and others.

e. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A, this chapter, or 661—Chapter 231.

f. Receipt of a certificate of noncompliance from the child support recovery unit of the Iowa department of health and human services, pursuant to the procedures set forth in Iowa Code chapter 252J.

g. Receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue, pursuant to Iowa Code chapter 272D.

h. Conviction of a felony offense, if the offense directly relates to the profession or occupation of the applicant, in the courts of this state or another state, territory or country. Conviction as used in this subrule includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

i. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the applicant’s profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

- j.* Willful or repeated violations of the provisions of this chapter.
- k.* Disqualifications pursuant to Iowa Code section 272C.15.

235.9(2) An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked for a reason other than receipt of a certificate of noncompliance from the child support recovery unit or a certificate of noncompliance from the department of revenue may appeal that action by requesting a contested case hearing, in writing, within 20 days of the department's determination. An appeal is subject to the provisions of 481—Chapters 9 and 10 governing contested cases. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit or the department of revenue are subject to the procedures set forth in 481—Chapter 8.

235.9(3) The department will notify the employing commercial explosive contractor licensee of the denial, suspension, or revocation of a commercial explosive blaster license.

These rules are intended to implement Iowa Code chapters 101A and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 265
“Consumer Fireworks Retail Seller Licensing and Wholesaler Registration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 10A.519 and 10A.520 as transferred by 2023 Iowa Acts, Senate File 514 (formerly Iowa Code sections 100.19(2), 100.19(4), 100.19(6), 100.19(8) and 100.19A(2))

State or federal law(s) implemented by the rulemaking: Iowa Code sections 10A.519 and 10A.520, as implemented by 2023 Iowa Acts, Senate File 514, and chapter 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 265, “Consumer Fireworks Retail Seller Licensing and Wholesaler Registration.” The proposed rules implement Iowa Code sections 10A.519 and 10A.520 as transferred by 2023 Iowa Acts, Senate File 514 (formerly Iowa Code sections 100.19 and 100.19A). The rules explain the safety standards that govern the sale of consumer fireworks, the circumstances under which consumer fireworks may be sold in the state, the application process and associated fees for a consumer fireworks retail sales license, and the requirements for wholesaler registration. The rules explain the Consumer Fireworks Fee Fund and the uses of the funds collected. The rules establish and explain the Local Fire Protection and Emergency Medical Service Providers Grant Program.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs to the public. Applicants and licensees bear the cost of fees for licensure or registration. Applicants bear the costs associated with submission of an application and the required accompanying documentation; such costs include site plans and liability insurance. Licensees whose licenses are revoked may incur costs related to appeals of the Department’s decision.

Costs to the Department include staff time spent ensuring compliance with the requirements of Iowa Code sections 10A.519 and 10A.520, which are incorporated into this rulemaking. The costs to the

Department from this rulemaking do not exceed any costs incurred due to Iowa Code sections 10A.519 and 10A.520. Costs to the Department are covered by the Consumer Fireworks Fee Fund established in Iowa Code section 10A.519(7). Licensing and registration fees go to the Fund and are appropriated to the Department to be used to fulfill the responsibilities of the Department for administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and consumer fireworks retail sales licensees and wholesaler registrants benefit from these rules. The rulemaking ensures licensees and registrants are meeting required safety standards. The rulemaking ensures the safety of the public by providing standards that must be met for licensure or registration.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Applicants and licensees bear the cost of fees for licensure or registration, which are statutorily prescribed. Applicants bear the costs associated with submission of an application and the required accompanying documentation; such costs include site plans and liability insurance. Licensees whose licenses are revoked may incur costs related to appeals of the Department's decision.

Costs to the Department include staff time spent ensuring compliance with the requirements of Iowa Code sections 10A.519 and 10A.520, which are currently incorporated into this rulemaking. The costs to the Department from this rulemaking do not exceed any costs incurred due to statutory requirements. Costs to the Department are covered by the Consumer Fireworks Fee Fund established in Iowa Code section 10A.519(7). Licensing and registration fees go to the Fund and are appropriated to the Department to be used to fulfill the responsibilities of the Department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

The Department has one staff member at 1.0 full-time equivalent (FTE) position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for the site. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because some sites are not renewed and new sites are added. The license term is annual, April 1 through March 31. The average number of retail seller license applications processed per year is approximately 600 and the average fees collected per year total \$270,000. The number of wholesaler registration applications processed per year is 13 and the fees collected per year total \$13,000. Most complaints relate to alleged sales of non-consumer-grade fireworks or unlicensed sites. These complaints are typically resolved through investigation or the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Qualitative description of impact:

Implementing the requirements of Iowa Code sections 10A.519 and 10A.520 ensures safety for licensees and the general public, particularly through review of site plans and inspection of sites open to sell consumer fireworks.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the Department include staff time spent ensuring compliance with the requirements of Iowa Code sections 10A.519 and 10A.520, which are currently incorporated into this rulemaking. The costs to the Department from this rulemaking do not exceed any costs incurred due to statutory requirements. Costs to the Department are covered by the Consumer Fireworks Fee Fund established in Iowa Code section 10A.519(7). Licensing and registration fees go to the Fund and are appropriated to the Department to be used to fulfill the responsibilities of the Department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

The Department has one staff member at 1.0 FTE position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for the site. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because some sites are not renewed and new sites are added. The license term is annual, April 1 through March 31. The average number of retail seller license applications processed per year is approximately 600 and the average fees collected per year are \$270,000. The number of wholesaler registration applications processed per year is 13 and the fees collected per year are \$13,000. Most complaints relate to alleged sales of non-consumer-grade fireworks or unlicensed sites. These complaints are typically resolved through investigation or the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

The Department utilizes three paid contract staff for site plan reviews and partners with local authorities having jurisdiction to complete site inspections. Local authorities having jurisdiction are compensated for each site inspection completed.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues. Fees collected are deposited in the Consumer Fireworks Fee Fund pursuant to Iowa Code section 10A.519(7). Moneys in the Fund are appropriated to the Department to be used to fulfill the responsibilities of the Department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This rulemaking implements statutory requirements set forth in Iowa Code sections 10A.519 and 10A.520. The rulemaking does not add costs to the Department or public in excess of what is required by Iowa Code sections 10A.519 and 10A.520.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less restrictive alternatives or less costly methods because the rules implement requirements found in Iowa Code sections 10A.519 and 10A.520.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety and the appropriate qualifications for licensees and registrants, many of whom are operating small businesses. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from a small business. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 265 and adopt the following **new** chapter in lieu thereof:

CHAPTER 265

CONSUMER FIREWORKS RETAIL SELLER LICENSING AND WHOLESALER REGISTRATION

661—265.1(100) Definitions. The following definitions apply:

“*APA 87-1*” means the same as defined in Iowa Code section 10A.519(1)“*a.*”

“*Commercial fireworks*” means large firework devices that are explosive materials intended for use in firework displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as set forth in 27 CFR 555 and 49 CFR 172 in effect on January 1, 2001, and APA Standard 87-1, Standard for the Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics.

“*Community group*” means the same as defined in Iowa Code section 10A.519(1)“*b.*”

“*Consumer fireworks*” means the same as defined in Iowa Code section 10A.520(1)“*a.*”

“*Display fireworks*” means the same as defined in Iowa Code section 727.2(1)“*b.*”

“*First-class consumer fireworks*” means the same as defined in Iowa Code section 10A.519(1)“*c.*”

“*NFPA 1124*” means the National Fire Protection Association (NFPA) Standard 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition.

“*Retailer*” means the same as defined in Iowa Code section 10A.519(1)“*d.*”

“*Second-class consumer fireworks*” means the same as defined in Iowa Code section 10A.519(1)“*e.*”

“*Serious violation*” means any of the following activities occurring at a licensed retail location selling consumer fireworks:

1. Commission of a criminal offense, punishable by one year or more incarceration.
2. Selling consumer fireworks to a minor.
3. Selling commercial fireworks.

“*Wholesaler*” means the same as defined in Iowa Code section 10A.520(1)“*b.*”

661—265.2(100) Sale of consumer fireworks—safety standards. Any retailer or community group offering for sale at retail any first-class or second-class consumer fireworks, as described in American Pyrotechnics Association (APA) Standard 87-1, as published in December 2001, shall do so in accordance with the National Fire Protection Association (NFPA) Standard 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition (hereinafter referred to as “APA 87-1” and “NFPA 1124,” respectively).

661—265.3(100) Sales allowed. A retailer or community group that is issued a license pursuant to this chapter is authorized to sell consumer fireworks as defined in this chapter. However, sales are permitted only as follows.

265.3(1) Prohibited sale or transfer to persons under 18 years of age.

a. A retailer or community group shall not transfer consumer fireworks, as described in APA 87-1, chapter 3, to a person who is under 18 years of age.

b. A person, firm, partnership or corporation shall not sell consumer fireworks to a person who is less than 18 years of age.

265.3(2) Exceptions for persons under 18 years of age.

a. A retailer selling or offering for sale consumer fireworks as described in APA 87-1, chapter 3, shall supervise any employees who are less than 18 years of age who are involved in the sale, handling, or transport of consumer fireworks in the course of their employment for the retailer.

b. A community group selling or offering for sale consumer fireworks as described in APA 87-1, chapter 3, shall ensure that any persons who are less than 18 years of age who are involved in the sale, handling, or transport of consumer fireworks by the community group, whether the persons less than 18 years of age are paid or unpaid, shall do so under the direct supervision of an adult member of the community group.

265.3(3) Dates of sale. A retailer or community group may sell consumer fireworks in accordance with Iowa Code section 10A.519(4) “c.”

661—265.4(100) License fees—consumer fireworks seller licenses.

265.4(1) Fee schedule. The fee schedule for consumer fireworks seller licenses is as provided in Iowa Code section 10A.519(3). License fees shall be paid before issuance of a license.

265.4(2) Administrative license fee. A nonrefundable administrative fee of \$100 is required with every application for a consumer fireworks retail sales license. The \$100 fee will be applied to the license fee if the license is issued.

265.4(3) Changing license class or amount. If a retailer or consumer group is issued a license for the retail sale of one class or amount of consumer fireworks, and changes to a class or amount that requires a higher license fee, the retailer or consumer group shall pay only the difference in the two fees. The license for the lower class will be invalid after the issuance of the new license.

265.4(4) No refund after issuance. Payment is final when the license is issued, and the fee will not be refunded.

661—265.5(100) Application and issuance of license.

265.5(1) Application form and instructions. The application for a license for retail sales of consumer fireworks shall be made to the department as described on the department’s website. A license is required for each location where the retail sales of consumer fireworks are conducted.

265.5(2) Application requirements. Applications and the accompanying plans must include all required information and must be prepared in accordance with the application instructions. An application will not be processed until all required information is received in the form required by the instructions.

265.5(3) Proof of insurance. Applicants must provide proof of and maintain commercial general liability insurance with minimum per occurrence coverage of at least one million dollars and aggregate coverage of at least two million dollars.

265.5(4) Issuance and display of license. If all of the requirements are met and the correct license fee is paid, the department will issue the license. The license must be clearly displayed at the location where the retail sales of consumer fireworks for which the license was issued are conducted.

661—265.6(100) Fireworks site plan review, approval, and inspection.

265.6(1) Plan approval. The retailer or community group shall submit to the department the proposed plan(s), including any required site plan(s) for the location(s) and for any building(s) or structure(s), whether permanent or temporary, that will be used for the sale and storage of fireworks. Requirements and exceptions for site plan submittal and approval are outlined on the department’s website.

NOTE: Regarding the incorporation of the reference to NFPA 102, 1995 edition, Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures into NFPA 1124 concerning tents and membrane structures, Sections 7.3.5 and 7.4.8.1.2 of NFPA 1124 should be read together with Section A.7.4.8.1.2 in the Explanatory Material in Annex A to NFPA 1124 and used

for the purposes of (1) determining the requirements for the means of egress in tents and membrane structures except as modified by Section 7.3.14 of NFPA 1124 for special requirements for the retail sales of consumer fireworks, and (2) to prohibit the use, discharge, or ignition of fireworks within the tent or membrane structure. The other provisions of NFPA 1124, including the sections relating to the retail sales of consumer fireworks in tents or membrane structures, remain applicable.

265.6(2) Inspections.

a. Every location and any building or structure where the retail sales of consumer fireworks are conducted or where consumer fireworks are stored is subject to an inspection at any time while engaged in the retail sale of consumer fireworks.

b. Prior to the sale of consumer fireworks, each retail location shall satisfy one of the following requirements:

- (1) A site inspection of the retail location by the department or the department's designee.
- (2) Attestation at the time of the application by the person submitting the application that the retail location will comply with NFPA 1124 and these rules.

c. If a retail location license is revoked, the location shall be inspected in accordance with subparagraph 265.6(2) "b"(1) prior to engaging in the sale of consumer fireworks the following year.

661—265.7(100) Unauthorized use of license. Only the retailer or the community group which is issued the license may use that license for the retail sales of consumer fireworks. Each license will be issued for a specific location. The license may not be transferred to or used at any other location.

265.7(1) If the retailer or community group to which the license is issued changes the location where the retail sale of consumer fireworks will be sold, the retailer or community group shall submit a new application and all required information for the new site and pay the applicable license fee. The application must be reviewed and approved in order for a new license to be issued.

265.7(2) The licensed retailer or community group or the authorized representative of the licensed retailer or community group must be personally present at all times when consumer fireworks are being sold.

265.7(3) No unlicensed retailer, community group, person, group of people, business, or other for-profit or nonprofit entity may use the license issued to another retailer or community group for the retail sales of consumer fireworks, unless the licensed retailer or community group or the authorized representative of the licensed retailer or community group is personally present at all times when consumer fireworks are being sold.

661—265.8(100) Revocation of license. If the department or department's designee determines during a physical site inspection that a serious violation has occurred, the license for that retail location may be immediately revoked. Vendors will be given the opportunity to remedy violations that are not deemed serious violations.

661—265.9(100) Consumer fireworks wholesalers—registration—safety—insurance.

265.9(1) Annual registration. Each wholesaler shall register with the department annually by completing and submitting the annual registration form and paying the fee as required by Iowa Code section 10A.520(3).

265.9(2) Safety regulations—storage and transfer. Each wholesaler shall comply with all of the requirements of NFPA 1124 for the storage and transfer of consumer fireworks.

265.9(3) Insurance required. While operating as a wholesaler, each wholesaler shall maintain commercial general liability insurance with minimum per-occurrence coverage of at least \$1 million and aggregate coverage of at least \$2 million.

661—265.10(100) Consumer fireworks fee fund. All fees received from the licenses issued for the retail sale of consumer fireworks and the annual registration fees received from wholesalers of consumer fireworks will be deposited into the consumer fireworks fee fund pursuant to Iowa Code section 10A.519.

The department will use the fees deposited into this fund to fulfill the responsibilities of the department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

661—265.11(100) Local fire protection and emergency medical service providers grant program. The local fire protection and emergency medical service providers grant program is established by Iowa Code section 10A.519(7). The grant program is funded with only those moneys from the consumer fireworks fee fund which are not needed by the department to fulfill the responsibilities of the department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

265.11(1) Definitions. The following definitions apply.

“*Emergency medical services*” means the same as defined in Iowa Code section 147A.1(5).

“*Fire protection service*” means volunteer or paid fire departments.

265.11(2) Authorized applicants. Any local fire protection service provider or local emergency medical service provider in the state of Iowa may apply for grant funds from the local fire protection and emergency medical service providers grant program.

265.11(3) Authorized purposes of grant funds. The grant funds in the local fire protection and emergency medical service providers grant program may be used for the following in order of priority:

- a. To establish or provide fireworks safety education programming to members of the public.
- b. To purchase necessary enforcement, protection, or emergency response equipment related to the sale and use of consumer fireworks in this state.
- c. To purchase necessary enforcement, protection, or emergency response equipment.

265.11(4) Application. An application for grant funds should be made to the department. The application form may be found on the department’s website. Applications must be received on or before June 30 of each year. The application will include all of the following:

- a. The application shall be signed by a person who is an official, owner, or another person who has authorization to sign on behalf of the fire protection service or the emergency medical service provider entity.
- b. The specifics of the proposed use of the grant funds.
 - (1) If the application is for equipment, the applicant should include a detailed description of the equipment, the company or entity from which the purchase will be made, the cost, and a justification as to how this equipment purchase fits the purposes of the grant program.
 - (2) If the application is for safety education programming, the application should include a detailed description of the programming, the specific people who will be providing the programming, and a description of the materials to be purchased and used.
- c. The amount of grant funds requested.

265.11(5) Approval of application. The director of the department will review the application and determine whether to make the award of grant funds. The director of the department has the sole discretion in determining whether or not to award funds from the grant program to the applicant and the amount of funds awarded to each applicant. Factors to be considered in making an award of grant funds include, but are not limited to:

- a. The amount of grant funds available.
- b. The number of applicants for grant funds.
- c. The proposed use of the grant funds and whether the use is consistent with the approved program purposes.
- d. Whether the applicant has previously been approved for grant funds from this program.
- e. The applicant’s use of any previous grant funds received from the program.

265.11(6) Award of tangible property. Should the department determine that the purpose of the grant program is better served by awarding tangible property, such as equipment, rather than funds, the department has the authority to award tangible property purchased with grant funds rather than disperse grant funds to the applicants.

265.11(7) Report required. All grant recipients shall file a report with the department that lists the amount of grant funds received and the purpose(s) for which the grant funds were spent. The department

may conduct an inspection or audit to determine compliance with the rules and purposes of the grant program, in addition to any other authorized audits.

These rules are intended to implement Iowa Code sections 10A.519 and 10A.520.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 275
“Licensing of Fire Protection System Contractors”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 100C.7
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 100C and 17A and section 272C.12

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 275, “Licensing of Fire Protection System Contractors.” These proposed rules establish a fire protection system contractor license program pursuant to Iowa Code chapter 100C. The rules explain the requirements for an individual to qualify and be designated as a responsible managing employee by a contractor seeking to obtain a license. The rules explain the requirements and process for licensure as a fire protection system contractor. The rules inform licensees and the public of the procedure for submitting complaints, the reasons for which a license may be denied, suspended or revoked, and the process by which the decision may be appealed. Pursuant to Iowa Code section 272C.12, the rules explain the process and requirements for licensure of persons licensed in other jurisdictions.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs to the public. Applicants and licensees bear the cost of fees for initial licensure and renewals. Contractors bear the cost of ensuring a responsible managing employee has the required training. Applicants or licensees whose licenses are denied, suspended or revoked may incur costs related to civil penalties or court costs to appeals.

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100C, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100C.9, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The Department has a staff member at 1.0

full-time equivalent (FTE) position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is April 1 of the year of issue through March 31, every year from issue. The average number of license applications processed per year is 150 and the average fees collected per year are \$80,000. Most complaints relate to unlicensed contractors. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this rulemaking. The rulemaking ensures the safety of the public by licensing fire protection system contractors through verification of statutory requirements for education and experience in the alarm system field for license applicants.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Applicants and licensees bear the cost of fees for initial licensure and renewals. Contractors bear the cost of ensuring a responsible managing employee has the required training. Applicants or licensees whose licenses are denied, suspended or revoked may incur costs related to statutorily prescribed civil penalties or costs related to appeals.

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100C, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100C.9, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The Department has a staff member at 1.0 FTE position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is April 1 of the year of issue through March 31, every year from issue. The average number of license applications processed per year is 150 and the average fees collected per year are \$80,000. Most complaints relate to unlicensed contractors. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Qualitative description of impact:

Implementing the requirements of Iowa Code chapter 100C ensures safety for licensees and the general public through verification of statutory requirements for education and experience in the alarm system field for license applicants.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100C, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100C.9, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The Department has a staff member at 1.0 FTE position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is April 1 of the year of issue through March 31, every year from issue. The average number of license applications processed per year is 150 and the average fees collected per year are \$80,000. Most complaints relate to unlicensed contractors. These are typically resolved through the

submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues. Pursuant to Iowa Code section 100C.9, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. In 2022, approximately \$90,000 in fees was collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This rulemaking implements statutory requirements set forth in Iowa Code chapter 100C. The rulemaking does not add costs to the Department or public in excess of what is required by Iowa Code chapter 100C.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less restrictive alternatives or less costly methods because the rules implement requirements found in Iowa Code chapter 100C.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety and the appropriate qualifications for licensees, many of whom are operating small businesses. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from a small business. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 275 and adopt the following new chapter in lieu thereof:

CHAPTER 275
LICENSING OF FIRE PROTECTION SYSTEM CONTRACTORS

661—275.1(100C) Establishment of program. The fire protection system contractor license is established pursuant to Iowa Code chapter 100C.

275.1(1) Licensure required. No person shall act as a fire extinguishing system contractor without being currently licensed as a fire protection system contractor by the department.

275.1(2) Endorsement. The licensure of each contractor will carry an endorsement for one or more of the following:

- a. Automatic sprinkler system installation.
- b. Special hazards systems installation.
- c. Preengineered dry chemical or wet agent fire suppression systems installation.
- d. Preengineered water-based fire suppression systems in one- and two-family dwellings installation.
- e. Automatic sprinkler system maintenance inspection.
- f. Special hazards system maintenance inspection.
- g. Preengineered dry chemical or wet agent fire suppression systems maintenance inspection.
- h. Preengineered water-based fire suppression systems in one- and two-family dwellings maintenance inspection.

Any person acting as a fire extinguishing system contractor shall do so only in relation to systems covered by the endorsements on the contractor's license.

275.1(3) Length of licensure. A license is normally for one year and expires on March 31 each year. A license which is effective on a date other than April 1 is effective on the date on which the license is issued and expires on March 31 of the following year.

661—275.2(100C) Definitions. The following definitions apply:

"Aerosol fire extinguishing system" means a system that uses a combination of microparticles and gaseous matter to flood the protected area. The particles are in a vapor state until discharged from the device. On release, a chain reaction produces solid particles and gaseous matter to suppress the fire.

"Automatic dry-chemical extinguishing system" means the same as defined in Iowa Code section 100C.1(4).

"Automatic fire extinguishing system" means the same as defined in Iowa Code section 100C.1(5).

"Automatic sprinkler system" means the same as defined in Iowa Code section 100C.1(6).

"Carbon dioxide extinguishing system" means the same as defined in Iowa Code section 100C.1(7).

"Clean agent" means an electrically nonconducting, volatile, or gaseous fire extinguishant that does not leave a residue upon evaporation.

"Deluge system" means the same as defined in Iowa Code section 100C.1(8).

"Dry chemical" means a powder composed of very small particles, usually sodium bicarbonate-, potassium bicarbonate-, or ammonium phosphate-based, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption (caking), and the proper flow capabilities.

"Dry pipe sprinkler system" means an extinguishing system employing automatic sprinklers that are attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) permits the water pressure to open a valve known as a dry pipe valve, which allows the water to flow into the piping system and out the opened sprinklers.

"Fire extinguishing system contractor," "fire protection system contractor," or *"contractor"* means the same as defined in Iowa Code section 100C.1(10).

"Foam extinguishing system" means the same as defined in Iowa Code section 100C.1(11).

"Halogenated extinguishing system" means the same as defined in Iowa Code section 100C.1(12).

“Hybrid-inert water mist system” means a system that combines the benefits of inert gas systems and water mist systems to extinguish fires. These systems provide both extinguishment and cooling to prevent reignition utilizing nontoxic, non-ozone-depleting hybrid media.

“Layout” means drawings, calculations and component specifications to achieve the specified system design installation. “Layout” does not include design.

“Listed” means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

“Maintenance inspection” means the same as defined in Iowa Code section 100C.1(13).

“Preengineered dry chemical or wet agent fire suppression system” means any system having predetermined flow rates, nozzle pressures and limited quantities of either agent. These systems have specific pipe sizes, maximum and minimum pipe lengths, flexible hose specifications, number of fittings and number and types of nozzles prescribed by a nationally recognized testing laboratory. The hazards against which these systems protect are specifically limited by the testing laboratory as to the type and size based upon actual fire tests. Limitations on hazards that can be protected against by these systems are contained in the manufacturer’s installation manual, which is referenced as part of the listing.

“Preengineered water-based system” means a packaged, water-based sprinkler system including all components connected to a water supply and designed to be installed according to pretested limitations.

“Responsible managing employee” means the same as defined in Iowa Code section 100C.1(14).

“Special hazards system” means a fire extinguishing system utilizing fire detection and control methods to release an extinguishing agent, other than water connected to a dedicated fire protection water supply.

“Wet agent” or *“wet chemical”* means an aqueous solution of organic or inorganic salts or a combination thereof that forms an extinguishing agent.

661—275.3(100C) Responsible managing employee. Each fire extinguishing system contractor shall designate a responsible managing employee and may designate one or more alternate responsible managing employees. A contractor may designate more than one responsible managing employee in order to satisfy the requirements for more than one endorsement as provided in subrule 275.1(2). If more than one responsible managing employee is designated, the contractor will indicate for which responsible managing employee each designated alternate managing employee serves as an alternate.

275.3(1) The responsible managing employee or employees shall be designated in the application for licensure, and, if a responsible managing employee is no longer acting in that role, the contractor shall so notify the department, in writing, within 30 calendar days.

275.3(2) If a responsible managing employee is no longer acting in that role and the contractor has designated an alternate responsible managing employee, the alternate responsible managing employee will become the responsible managing employee and the contractor shall so notify the department, in writing, within 30 calendar days of the date on which the preceding responsible managing employee ceased to act in that role. If the contractor has designated more than one alternate responsible managing employee, the notice to the department will indicate which alternate responsible managing employee has assumed the position of responsible managing employee.

275.3(3) If a responsible managing employee designated by a fire extinguishing system contractor is no longer acting in the role of responsible managing employee and the contractor has not designated an alternate responsible managing employee, the contractor shall designate a new responsible managing employee and shall notify the department, in writing, of the designation within six months of the date on which the former responsible managing employee ceased to act in that capacity. If the department has not been notified of the appointment of a new responsible managing employee within six months of the date on which a responsible managing employee ceased serving in that capacity, the department shall suspend the license of the fire protection system contractor.

275.3(4) Training requirements. A responsible managing employee or an alternate responsible managing employee shall meet one of the requirements for the following endorsements:

a. Automatic sprinkler system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in fire extinguishing system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level III or above in water-based systems layout.

b. Special hazards system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in fire extinguishing system design, or

(2) Current certification by the NICET at level III or above in special hazard systems.

c. Preengineered dry chemical or wet agent fire suppression system installation:

(1) Current certification by the NICET at level II or above in special hazard systems, or

(2) Current certification by the National Association of Fire Equipment Distributors (NAFED) in preengineered kitchen fire suppression systems, preengineered industrial fire suppression systems, or both, or

(3) Satisfactory completion of any training required by the manufacturer for the installation of any system the contractor installs.

d. Preengineered water-based fire suppression system in one- and two-family dwellings installation:

(1) Current certification by the NICET at level II or above in special hazard systems, or

(2) Satisfactory completion of any training required by the manufacturer for the installation of any system the contractor installs.

e. Automatic sprinkler system maintenance inspection:

(1) Current certification from the NICET at level II in water-based system layout, or

(2) Current certification by the NICET at level II or above in inspection and testing of water-based systems.

f. Special hazards system maintenance inspection:

(1) Current certification by the NICET at level II or above in special hazard systems.

(2) Reserved.

g. Preengineered dry chemical or wet agent fire suppression system maintenance inspection:

(1) Current certification by the NICET at level I or above in special hazard systems, or

(2) Current certification by the NAFED in preengineered kitchen fire suppression systems, preengineered industrial fire suppression systems, or both, or

(3) Satisfactory completion of any training required by the manufacturer for the maintenance and inspection of any system the contractor inspects.

h. Preengineered water-based fire suppression system maintenance inspection:

(1) Current certification by the NICET at level I or above in special hazard systems, or

(2) Satisfactory completion of any training required by the manufacturer for the maintenance and inspection of any system the contractor inspects.

275.3(5) *Training or testing approval.* Satisfactory completion of an applicable training or testing program that has been approved by the department may replace any of the endorsement requirements of subrule 275.3(4). In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the department, such approval is required prior to acceptance of the training or testing to meet licensure requirements. Approval by the department of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the department. Any individual, firm or organization seeking to obtain such approval will apply to the department no later than July 1 every odd-numbered year. Program information and any other documentation requested by the department for consideration shall be submitted to the department. Training and testing approved by the department is listed on the department's licensing website.

275.3(6) License applicability. Work performed by a contractor subject to these rules shall be limited to areas of competence indicated by the specific certification or other training requirements met by the responsible managing employee. Work performed in the state shall not begin prior to:

- a. Receipt of new or renewed license issued by the department to the applicant, or
- b. Receipt of written approval to perform work prior to issuance of a new or renewed license from the department to the applicant.

275.3(7) Portable fire extinguisher requirements. Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing a fire extinguishing system or portable fire extinguisher set forth in any rule of the department or local fire ordinance or standard adopted by reference therein.

275.3(8) Licensure of persons licensed in other jurisdictions. A fire protection system contractor license may be issued without examination to a person licensed in other jurisdictions if the conditions of Iowa Code section 272C.12 are met.

661—275.4(100C) License requirements. A fire extinguishing system contractor shall meet all of the following requirements in order to receive licensure from the department and continue to meet all requirements throughout the period of licensure. The contractor shall notify the department, in writing, within 30 calendar days if the contractor fails to meet any requirement for licensure.

275.4(1) The contractor shall designate one or more responsible managing employees as provided in rule 661—275.3(100C).

275.4(2) The contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic fire extinguishing systems in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the department 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The contractor shall cease operation immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A contractor shall not initiate any installation of a fire extinguishing system which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the contractor has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

275.4(3) The contractor shall maintain current registration as a contractor with the labor services division of the Iowa workforce development department in compliance with Iowa Code chapter 91C and 875—Chapter 150. The contractor shall provide a copy of the contractor's current registration from the Iowa workforce development department with the contractor's application for licensure.

EXCEPTION: A contractor will not be required to maintain registration with the labor services division of the Iowa workforce development department if the contractor does not meet the definition of "contractor" for purposes of Iowa Code chapter 91C and 875—Chapter 150. Written documentation of such exemption must be provided to the department at the time of application for licensure as a fire protection system contractor.

275.4(4) The contractor shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the contractor is performing work.

275.4(5) A license may be renewed only if the licensee has completed recertification of the applicable requirements relative to the endorsements for which the licensee is renewing.

275.4(6) Any individual while serving honorably on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1, applying for licensure as a fire protection system contractor shall apply for licensure following 481—Chapter 7.

661—275.5(100C) Application and fees.

275.5(1) Application. Any contractor seeking licensure as a fire protection system contractor shall submit a completed application form to the department. The application shall be filed no later than 30 days prior to the date of beginning work in this state or the date on which an existing license expires. An application form may be obtained from the department or the department's website. The application form shall be submitted with all required attachments and the required application fee. An application will not be considered complete unless all required information is submitted, including required attachments and fees, and will not be processed until it is complete.

275.5(2) License fee.

- a. The license fee is \$500 for one year.
- b. If an application for licensure provides for more than one responsible managing employee pursuant to rule 661—275.3(100C), there will be an additional fee of \$50 for each responsible managing employee beyond the first. If an application for licensure provides for more than one endorsement as provided in subrule 275.1(2), there will be an additional fee of \$50 for each endorsement beyond the first.
- c. The department will waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

275.5(3) Payment. The license fee may be submitted electronically or delivered by draft, check, or money order in the applicable amount payable to the department. Cash payments are not accepted.

275.5(4) Amended license.

- a. The fee for issuance of an amended license is the difference between the original license fee paid and changes in endorsement(s) or responsible managing employee(s), if applicable. The fee shall be submitted with the request for an amended license.
- b. A contractor will request and the department will issue an amended license for any of the following reasons, and a fee does not apply:
 - (1) A change in the designation of a responsible managing employee;
 - (2) A change in insurance coverage; or
 - (3) A change in any other material information included in or with the initial or renewal application.A change in the address of the business is a material change.
- c. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the department but will not require issuance of an amended license or payment of the amended license fee.

275.5(5) Attachments. Required attachments to the application for licensure are outlined on the department's website.

661—275.6(100C) Complaints. Complaints regarding the performance of any licensed contractor, failure of a licensed contractor to meet any of the requirements established in Iowa Code chapter 100C or this chapter or any other provision of law, or operation as a fire extinguishing system contractor without licensure may be filed with the department. Complaints should be as specific as possible and clearly identify the contractor against whom the complaint is filed. Complaints should be submitted in writing to the department as indicated on the department's website. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

661—275.7(100C) Denial, suspension, or revocation of licensure; civil penalties; and appeals. The department may deny, suspend or revoke the license of a contractor, or assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as a fire extinguishing system contractor is violated.

275.7(1) Denial. The department may deny an application for licensure for reasons including, but not limited to:

- a. If the applicant makes a false statement on the application form or in any other submission of information required for license. "False statement" means providing false information or failing

to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for licensure established in this chapter.

c. If the applicant is currently barred for cause from acting as a fire extinguishing system contractor in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as a fire extinguishing system contractor and if the basis of that action reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have been previously barred for cause from operating as a fire extinguishing system contractor in another jurisdiction and is no longer barred from doing so, the department will evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a licensed contractor. If an applicant is denied under this provision, the applicant will be notified of the specific reasons for the denial.

e. Conviction of a felony offense, if the offense directly relates to the profession or occupation of the licensee, in the courts of this state or another state, territory or country. "Conviction" as used in this subrule includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction. If an applicant is denied under this provision, the applicant will be notified of the specific reasons for the denial.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Willful or repeated violations of the provisions of this chapter.

275.7(2) Suspension. A suspension of a license may be imposed by the department for any violation of these rules or Iowa Code chapter 100C or for a failure to meet any legal requirement to operate as a fire extinguishing system contractor in this state. Failure to provide any notice to the department as provided in these rules will be grounds for suspension. An order of suspension will specify the length of the suspension and will specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the license even after the period of the suspension.

275.7(3) Revocation.

a. A revocation is a termination of a license. A license may be revoked by the department for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire extinguishing system incorrectly installed by a licensed contractor or when information comes to the attention of the department which, if known to the department when the application was being considered, would have resulted in denial of the license.

b. A new application for licensure from a contractor whose license had previously been revoked will not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The department may specify in the revocation order a longer period than one year before a new application for licensure may be considered. When a new application for licensure from a contractor whose license was previously revoked is being considered, the applicant may be denied licensure based upon the same information which was the basis for revocation even after any such period established by the department has expired.

275.7(4) Disqualifications for criminal convictions limited. A person's conviction of a crime may be grounds for the denial, revocation, or suspension of a license in circumstances authorized by Iowa Code section 272C.15.

275.7(5) Civil penalties. The department may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty will not be imposed in lieu of a revocation.

275.7(6) Appeals. Any denial, suspension, or revocation of a license, or any civil penalty imposed upon a licensed contractor under this rule may be appealed by the contractor within 14 days of receipt of the notice by submitting a written request for a contested case appeal to the department. An appeal is subject to the provisions of 481—Chapters 9 and 10 governing contested cases.

These rules are intended to implement Iowa Code chapter 100C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 276
“Licensing of Fire Protection System Technicians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 100D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 100D and 17A and section 272C.12

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 276, “Licensing of Fire Protection System Technicians.” These proposed rules establish a fire protection system installer and maintenance worker licensing program pursuant to Iowa Code chapter 100D. The rules explain the requirements and process for obtaining a license from the Department. The rules inform licensees and the public of the procedure for submitting complaints, the reasons for which a license may be denied, suspended or revoked, and the process by which the decision may be appealed. The rules explain the process and requirements for licensure of persons licensed in other jurisdictions, pursuant to Iowa Code section 272C.12.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs to the public. Applicants bear the cost to meet training requirements necessary for licensure. Applicants and licensees bear the cost of fees for initial licensure and renewals. Applicants or licensees whose licenses are denied, suspended or revoked may incur costs related to civil penalties or court costs to appeal.

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100D, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100D.7, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The Department has a staff member at 1.0 full-time equivalent (FTE) position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory

requirements for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is April 1 of the year of issue through March 31, two years from issue. The average number of license applications processed per year is 500 and the average fees collected per year are \$90,000. Most complaints relate to unlicensed technicians. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from this rulemaking. The rulemaking ensures the safety of the public through verification of statutory requirements for education and experience in the alarm system field for license applicants.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Applicants bear the cost to meet training requirements necessary for licensure. Applicants and licensees bear the cost of fees for initial licensure and renewals. Applicants or licensees whose licenses are denied, suspended or revoked may incur costs related to civil penalties or court costs to appeals.

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100D, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100D.7, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The department has a staff member at 1.0 FTE position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is April 1 of the year of issue through March 31, two years from issue. The average number of license applications processed per year is 500 and the average fees collected per year are \$90,000. Most complaints relate to unlicensed technicians. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Qualitative description of impact:

Implementing the requirements of Iowa Code chapter 100D ensures safety for licensees and the general public through verification of statutory requirements for education and experience in the alarm system field for license applicants.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100D, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100D.7, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The Department has a staff member at 1.0 FTE position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is April 1 of the year of issue through March 31, two years from issue. The average number of license applications processed per year is 500 and the average fees collected per year are \$90,000. Most complaints relate to unlicensed technicians. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

Pursuant to Iowa Code section 100D.7, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. In 2022, approximately \$112,000 in fees was collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This rulemaking implements statutory requirements set forth in Iowa Code chapter 100D. The rulemaking does not add costs to the Department or public in excess of what is required by Iowa Code chapter 100D.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less restrictive alternatives or less costly methods because the rules implement requirements found in Iowa Code chapter 100D.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety and the appropriate qualifications for licensees, many of whom are operating small businesses. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from a small business. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 276 and adopt the following new chapter in lieu thereof:

CHAPTER 276 LICENSING OF FIRE PROTECTION SYSTEM TECHNICIANS

661—276.1(100D) Establishment of program. The fire protection system technician license is established pursuant to Iowa Code chapter 100D.

276.1(1) Licensing required. A person shall not act as a fire protection system installer and maintenance worker without being currently licensed as a fire protection system technician by the department, except as provided in Iowa Code sections 100D.2(1) and 100D.11.

a. For purposes of Iowa Code section 100D.2(1) “*a*,” “direct supervision” means that the person supervising the person performing the work shall be on the job site while the work being supervised is performed.

b. For purposes of Iowa Code section 100D.2(1) “*d*,” the work performed which is subject to the provisions of this chapter must be within the scope of the endorsement(s) of the licensed contractor employing the responsible managing employee.

276.1(2) Endorsement. Any person acting as a fire protection system installer and maintenance worker shall do so only in relation to systems and work covered by the endorsements on the person’s license. The license of each technician shall carry an endorsement for one or more of the following:

- a.* Automatic sprinkler system installation.
- b.* Special hazards system installation.
- c.* Preengineered dry chemical or wet agent fire protection systems installation.
- d.* Preengineered water-based fire protection systems in one- and two-family dwellings installation.
- e.* Automatic sprinkler system maintenance inspection.
- f.* Special hazards system maintenance inspection.
- g.* Preengineered dry chemical or wet agent fire protection systems maintenance inspection.
- h.* Preengineered water-based fire protection systems in one- and two-family dwellings maintenance inspection, or
- i.* Fire protection technician trainee.

276.1(3) Length of licensure. Licensure shall normally be for two years and will expire on March 31 of the second year after the license has been issued. A license which is effective on a date other than April 1 will be effective on the date on which the license is issued and will expire the next March, after one year has passed from the date on which the license was issued. A technician trainee license may be renewed once and a person may work as a technician trainee for a maximum of four years.

661—276.2(100D) Definitions. The following definitions apply:

“*Aerosol fire extinguishing system*” means a system that uses a combination of microparticles and gaseous matter to flood the protected area. The particles are in a vapor state until discharged from the device. On release, a chain reaction produces solid particles and gaseous matter to suppress the fire.

“*Apprentice fire protection system installer and maintenance worker*” means the same as defined in Iowa Code section 100D.1(1).

“*Automatic fire extinguishing system*” means the same as defined in Iowa Code section 100C.1(5).

“*Automatic sprinkler system*” means the same as defined in Iowa Code section 100C.1(6).

“*Carbon dioxide extinguishing system*” means the same as defined in Iowa Code section 100C.1(7).

“*Clean agent*” means an electrically nonconducting, volatile, or gaseous fire extinguishant that does not leave a residue upon evaporation.

“*Deluge system*” means the same as defined in Iowa Code section 100C.1(8).

“*Department*” means the same as defined in Iowa Code section 100D.1(2).

“*Dry chemical*” means a powder composed of very small particles, usually sodium bicarbonate-, potassium bicarbonate-, or ammonium phosphate-based, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption (caking), and the proper flow capabilities.

“*Dry pipe sprinkler system*” means an extinguishing system employing automatic sprinklers that are attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) permits the water pressure to open a valve known as a dry pipe valve, which allows the water to flow into the piping system and out the opened sprinklers.

“*Fire extinguishing system contractor*,” “*fire protection system contractor*,” or “*contractor*” means the same as defined in Iowa Code section 100D.1(4).

“*Fire protection system*” means the same as defined in Iowa Code section 100D.1(5).

“*Fire protection system installation*” means the same as defined in Iowa Code section 100D.1(6).

“*Fire protection system installer and maintenance worker*” or “*fire protection system technician*” means the same as defined in Iowa Code section 100D.1(8). A fire protection system technician shall be an employee of a fire protection system contractor or, if employed by anyone other than a fire protection system contractor, shall perform work requiring licensing as a fire protection system technician only on property owned or occupied by such employer and may obtain a license if the employer is not a licensed contractor.

“*Fire protection system maintenance*” means the same as defined in Iowa Code section 100D.1(7).

“*Foam extinguishing system*” means the same as defined in Iowa Code section 100C.1(11).

“*Halogenated extinguishing system*” means the same as defined in Iowa Code section 100C.1(12).

“*Hybrid-inert water mist system*” means a system that combines the benefits of inert gas systems and water mist systems to extinguish fires. These systems provide both extinguishment and cooling to prevent reignition utilizing nontoxic, non-ozone-depleting hybrid media.

“*Layout*” means drawings, calculations and component specifications to achieve the specified system design installation. “*Layout*” does not include design.

“*Listed*” means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of the production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

“*Preengineered dry chemical or wet agent fire suppression system*” means any system having predetermined flow rates, nozzle pressures and limited quantities of either agent. These systems have specific pipe sizes, maximum and minimum pipe lengths, flexible hose specifications, number of fittings and number and types of nozzles prescribed by a nationally recognized testing laboratory. The hazards against which these systems protect are specifically limited by the testing laboratory as to the type and size based upon actual fire tests. Limitations on hazards that can be protected against by these systems are contained in the manufacturer’s installation manual, which is referenced as part of the listing.

“*Preengineered fire protection system*” means the same as defined in Iowa Code section 100D.1(9).

“*Preengineered water-based fire protection system*” means a packaged, water-based sprinkler system including all components connected to a water supply and designed to be installed according to pretested limitations.

“*Responsible managing employee*” means the same as defined in Iowa Code section 100D.1(10).

“*Routine maintenance*” means the same as defined in Iowa Code section 100D.1(11).

“*Special hazards system*” means a fire extinguishing system utilizing fire detection and control methods to release an extinguishing agent, other than water connected to a dedicated fire protection water supply.

“*Wet agent*” or “*wet chemical*” means an aqueous solution of organic or inorganic salts or a combination thereof that forms an extinguishing agent.

661—276.3(100D) Licensing requirements. A fire protection system installer and maintenance worker shall meet all of the following requirements in order to receive a license from the department and shall continue to meet all requirements throughout the period of licensure. A licensee shall notify the department, in writing, within 30 calendar days if the licensee fails to meet any requirement for licensure.

276.3(1) Compliance. Each licensee shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and in any political subdivision in which the licensee is performing work.

276.3(2) Training requirements. An applicant for a license shall meet one of the requirements for the following endorsements:

- a.* Automatic sprinkler system installation:
 - (1) Current certification by the National Inspection Testing and Certification Corporation (NITC) in the STAR Fire Sprinkler Fitting Mastery Examination, or
 - (2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in water-based system layout, or
 - (3) Current certification by the NICET at level I or above in inspection and testing of water-based systems.
- b.* Special hazards system installation:
 - (1) Current certification by the NICET at level I or above in special hazards systems.
 - (2) Reserved.
- c.* Preengineered dry chemical or wet agent fire protection system installation:
 - (1) Current certification by the NICET at level I or above in special hazard systems, or
 - (2) Current certification by the National Association of Fire Equipment Distributors (NAFED) in preengineered kitchen fire extinguishing systems, preengineered industrial fire extinguishing systems, or both, or
 - (3) Satisfactory completion of any training required by the manufacturer for the installation of any system the technician installs, or
 - (4) Current certification by the Fire Protection Certification LTD (FPC) in commercial kitchen fire suppression system service, preengineered fire suppression maintenance, or both.
- d.* Preengineered water-based fire protection systems in one- and two-family dwellings installation:
 - (1) Current certification by the NICET at level I or above in special hazard systems, or
 - (2) Satisfactory completion of any training required by the manufacturer for the installation of any system the technician installs.
- e.* Automatic sprinkler system maintenance inspection:
 - (1) Current certification by the NITC in the STAR Fire Sprinkler Fitting Mastery Examination, or
 - (2) Current certification by the NICET at level I or above in water-based systems layout, or
 - (3) Current certification by the NICET at level I or above in inspection and testing of water-based systems.
- f.* Special hazards system maintenance inspection:
 - (1) Current certification by the NICET at level I or above in special hazard systems.
 - (2) Reserved.
- g.* Preengineered dry chemical or wet agent fire protection system maintenance inspection:
 - (1) Current certification by the NICET at level I or above in special hazard systems, or
 - (2) Current certification by the NAFED in preengineered kitchen fire extinguishing systems, preengineered industrial fire extinguishing systems, or both, or
 - (3) Satisfactory completion of any training required by the manufacturer for maintenance and inspection of any system the technician inspects, or
 - (4) Current certification by the FPC in commercial kitchen fire suppression system service, preengineered fire suppression maintenance, or both.
- h.* Preengineered water-based fire protection systems in one- and two-family dwellings installation:
 - (1) Current certification by the NICET at level I or above in special hazard systems, or
 - (2) Satisfactory completion of any training required by the manufacturer for maintenance and inspection of any system the technician inspects.
- i.* Fire protection system technician trainee: Submission of a completed application no later than the first day of employment. A fire protection system technician trainee may perform work which requires licensure under this chapter only under the direct supervision of a licensed fire protection system technician or responsible managing employee whose license contains one or more endorsements as provided in subrule 275.1(2) or 276.1(2), and that work must be within the scope of work authorized by the endorsements held by the supervising fire protection system technician or responsible managing employee. At least one licensed fire protection system technician or responsible managing employee

must be present for every three apprentice fire protection system installers and maintenance workers or fire protection system technician trainees performing work related to fire protection systems.

276.3(3) Continuing education. A license may be renewed only if the licensee has completed recertification of the applicable certification requirements relative to the endorsement(s) for which the license is being renewed.

276.3(4) Training or testing approval. Satisfactory completion of an applicable training or testing program approved by the department may replace any of the endorsement requirements of subrule 276.3(2). In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the department, such approval is required prior to acceptance of the training or testing to meet licensure requirements. Approval by the department of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the department. Any individual, firm, or organization seeking to obtain such approval may apply to the department no later than July 1 every odd-numbered year. Program information and any other documentation requested by the department for consideration shall be submitted to the department. Training and testing approved by the department will be listed on the department's licensing website.

276.3(5) License applicability. Work performed by a technician or trainee subject to these rules shall be limited to areas of competence indicated by the specific endorsement(s) identified on the license. Work performed in the state shall not begin prior to:

- a. Receipt of a new or renewed license issued by the department to the applicant, or
- b. Receipt of written approval to perform work prior to issuance of a new or renewed license from the department to the applicant.

276.3(6) Portable fire extinguisher requirements. Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing a fire extinguishing system or portable fire extinguisher set forth in any rule of the department or local fire ordinance or standard adopted by reference therein.

276.3(7) Licensure of persons licensed in other jurisdictions. A fire protection system technician license may be issued without examination to a person licensed in other jurisdictions if the conditions of Iowa Code section 272C.12 are met.

276.3(8) Veterans and active duty military. Any individual serving honorably on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1, should apply for licensure following 481—Chapter 7.

661—276.4(100D) Application and fees.

276.4(1) Application. Any person seeking licensure as a fire protection system technician shall submit a completed application form to the department. The application shall be filed no later than 30 days prior to the date of beginning work in this state or the date on which an existing license expires. An application form may be obtained from the department or from the department's website. The application form shall be submitted with all required attachments and license fee. An application is not complete unless all required information is submitted, including required attachments and fees, and will not be processed until it is complete.

276.4(2) License fee.

a. The fee for a permanent or provisional license, except for a trainee license, is \$200. If an application for a license provides for more than one endorsement as provided in subrule 276.1(2), there will be an additional fee of \$25 for each endorsement beyond the first.

b. The fee for a fire protection system technician trainee license is \$100.

c. The department will waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

276.4(3) Payment. The license fee shall be submitted electronically, or mailed or hand-delivered by draft, check, or money order in the applicable amount payable to the Iowa Department of Inspections, Appeals, and Licensing. Cash payments are not accepted.

276.4(4) Amended license.

a. The fee for issuance of an amended license is the difference between the original license fee paid and changes in endorsement(s), if applicable. The fee shall be submitted with a request for an amended license.

b. A licensee will request and the department will issue an amended license for any of the following reasons, and a fee does not apply:

(1) A change in employer. A licensee may only transfer the licensee's technician license to another employer if the licensee paid the license fee at the time of original application. If the licensee's previous employer paid the license fee, the licensee must reapply for a new license under the licensee's new employer and pay the license fee.

(2) A change in any other material information included in or with the initial or renewal application. A change of address is a material change.

c. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the department but will not require issuance of an amended license or payment of the amended license fee.

276.4(5) Attachments. Required attachments to the application for a license are outlined on the department's website.

661—276.5(100D) Complaints. Complaints regarding the performance of any licensed fire protection system technician, failure of a licensee to meet any of the requirements established in Iowa Code chapter 100D or this chapter or any other provision of law, or persons operating as fire protection system installers and maintenance workers without licensure may be submitted to the departments. Complaints should be as specific as possible and clearly identify the licensee or other person against whom the complaint is filed. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

661—276.6(100D) Denial, suspension, or revocation of licensure; civil penalties; appeals. If a licensee or person who performs work requiring a license violates any provision of these rules or any other provision of law related to work requiring licensure pursuant to this chapter, the department may deny, suspend or revoke a license or assess a civil penalty to a licensee or to a person who performs work requiring licensure pursuant to this chapter and who is not licensed.

276.6(1) Denial. The department may deny an application for licensure:

a. If the applicant makes a false statement on the application form or in any other submission of information required for licensure. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for licensure established in this chapter.

c. If the applicant is currently barred for cause from licensure equivalent to that provided for in this chapter in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as a fire protection system installer and maintenance worker and if the basis of that action reflects upon the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have been previously barred for cause from operating as a fire protection system installer and maintenance worker in another jurisdiction and is no longer barred from doing so, the department will evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a licensee. If an applicant is denied licensure under this paragraph, the applicant will be notified of the specific reasons for the denial.

e. Conviction of a felony offense, if the offense directly relates to the profession or occupation of the licensee, in the courts of this state or another state, territory or country. "Conviction" as used in this subrule includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy

of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction. If an applicant is denied licensure under this paragraph, the applicant will be notified of the specific reasons for the denial.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Willful or repeated violations of the provisions of this chapter.

276.6(2) Suspension. A suspension of a license may be imposed by the department for any violation of these rules or Iowa Code chapter 100D or for a failure to meet any legal requirement to operate as a fire protection system installer and maintenance worker in this state. Failure to provide any notice to the department as required by these rules may be grounds for suspension. An order of suspension will specify the length of the suspension and will specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the license even after the period of the suspension.

276.6(3) Revocation.

a. A revocation is a termination of a license. A license may be revoked by the department for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire protection system incorrectly installed by a licensee or when information comes to the attention of the department which, if known to the department when the application was being considered, would have resulted in denial of the license.

b. A new application for a license from an applicant whose license has previously been revoked will not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The department may specify in the revocation order a period longer than one year before a new application for a license may be considered. When a new application for a license from a person whose license was previously revoked is being considered, the applicant may be denied a license based upon the same information which was the basis for revocation even after any such period established by the department has expired.

276.6(4) Disqualifications for criminal convictions limited. A person's conviction of a crime may be grounds for the denial, revocation, or suspension of a license in circumstances authorized by Iowa Code section 272C.15.

276.6(5) Civil penalties. The department may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty will not be imposed in lieu of a revocation.

276.6(6) Appeals. Any denial, suspension, or revocation of a license, or any civil penalty imposed upon a licensee or other person under this rule may be appealed within 14 days of receipt of the notice by submitting a written request for a contested case appeal to the department. An appeal is subject to the provisions of 481—Chapters 9 and 10 governing contested cases.

These rules are intended to implement Iowa Code chapter 100D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 277
“Licensing of Alarm System Contractors and Technicians”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 100C.7
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 100C and 17A and section 272C.12

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

These proposed rules establish alarm system contractor and alarm system installer licenses pursuant to Iowa Code chapter 100C. The rules explain the requirements for an individual to qualify and be designated as a responsible managing employee by a contractor seeking to obtain a license. The rules explain the requirements and process for licensure as an alarm system contractor or an alarm system technician. The rules inform licensees and the public of the procedure for submitting complaints; the reasons for which a license may be denied, suspended or revoked and the process by which the decision may be appealed.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs to the public. Companies and installers working in the state of Iowa for installation, maintenance, inspection, and/or testing of fire, nurse call, and/or security alarm systems bear the costs of the proposed rulemaking. Applicants and licensees bear the cost of fees for initial licensure and renewals. Contractors bear the cost of ensuring a responsible managing employee has the required training. Applicants or licensees whose licenses are denied, suspended or revoked may incur costs related to civil penalties or court costs to appeals.

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100C, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100C.9, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The Department has a staff member at 1.0

full-time equivalent (FTE) position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is October 1 of the year of issue through September 30, three years from issue. The average number of license applications processed per year is 300 and the average fees collected per year total \$60,000. Most complaints relate to unlicensed contractors or technicians. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Classes of persons that will benefit from the proposed rulemaking:

The general public, including businesses and individuals operating and residing in the state of Iowa who need installation, maintenance, inspection, and/or testing of fire, nurse call, and/or security alarm systems benefit from this rulemaking. The rulemaking ensures the safety of the public by licensing alarm system contractors and technicians through verification of statutory requirements for education and experience in the alarm system field.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Applicants and licensees bear the cost of fees for initial licensure and renewals. Contractors bear the cost of ensuring a responsible managing employee has the required training. Applicants or licensees whose licenses are denied, suspended or revoked may incur costs related to civil penalties or court costs to appeals.

Costs to the agency include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100C, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100C.9, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The Department has a staff member at 1.0 FTE position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is October 1 of the year of issue through September 30, three years from issue. The average number of license applications processed per year is 300 and the average fees collected per year are \$60,000. Most complaints relate to unlicensed contractors or technicians. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Qualitative description of impact:

Implementing the requirements of Iowa Code chapter 100C ensures safety for licensees and the general public through verification of statutory requirements for education and experience in the alarm system field for license applicants.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department is responsible for the majority of the costs to implement and enforce the licensing rules. Local Authorities Having Jurisdiction (AHJ) assist in some jurisdictions with enforcement of licensing by verifying appropriate licensing for contractors and installers working in the state of Iowa.

Costs to the Department include staff time spent ensuring compliance with the requirements of Iowa Code chapter 100C, including licensure criteria, the investigation of complaints, and processing violations. Pursuant to Iowa Code section 100C.9, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. The Department has a staff member at 1.0 FTE position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements

for education and experience. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because the license term is October 1 of the year of issue through September 30, three years from issue. The average number of license applications processed per year is 300 and the average fees collected per year total \$60,000. Most complaints relate to unlicensed contractors or technicians. These are typically resolved through the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues.

Pursuant to Iowa Code section 100C.9, fees collected in issuing licenses are retained by the Department and used to offset the costs of administering the chapter. In 2022, approximately \$61,000 in fees was collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This rulemaking implements statutory requirements set forth in Iowa Code chapter 100C. The rulemaking does not add costs to the Department or public in excess of what is required by Iowa Code chapter 100C.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less restrictive alternatives or less costly methods because the rules implement requirements found in Iowa Code chapter 100C.

Iowa Code section 272C.12, incorporated by reference in the rules, permits persons licensed in other jurisdictions to obtain licensure in Iowa without examination if the conditions of Iowa Code section 272C.12 are met.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety and the appropriate qualifications for licensees, many of whom are operating small businesses. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 277 and adopt the following **new** chapter in lieu thereof:

CHAPTER 277

LICENSING OF ALARM SYSTEM CONTRACTORS AND TECHNICIANS

661—277.1(100C) Establishment of program. The alarm system contractor and alarm system technician license are established pursuant to Iowa Code chapter 100C.

277.1(1) Licensure required. No person shall act as an alarm system contractor without being currently licensed as an alarm system contractor by the department. No person shall act as an alarm system technician without being currently licensed by the department as an alarm system contractor or alarm system technician unless the person is engaged in the installation of alarm system components, is currently licensed pursuant to Iowa Code chapter 103, and is exempt from requirements for licensure by the department as an alarm system technician pursuant to Iowa Code chapter 103.

Exception: A person may pull cable for an alarm system under the direct supervision of a licensed contractor, licensed technician, or person licensed pursuant to Iowa Code chapter 103 who is working as a technician without licensing pursuant to Iowa Code chapter 103.

277.1(2) Endorsement.

a. The licensure of each contractor, technician, or technician trainee shall carry an endorsement for one or more of the following:

- (1) Alarm system contractor.
 1. Fire alarm system installation.
 2. Nurse call system installation.
 3. Security alarm system installation.
 4. Alarm system maintenance inspection.
 5. Dwelling unit alarm system installation.
- (2) Alarm system technician.
 1. Fire alarm system installation.
 2. Nurse call system installation.
 3. Security alarm system installation.
 4. Alarm system component installation.
 5. Alarm system maintenance inspection.
 6. Dwelling unit alarm system installation.
- (3) Alarm system technician trainee.

b. Any person acting as an alarm system contractor or technician, other than a person who is not required to be licensed for such work by the department, shall do so only in relation to systems covered by the endorsements on the contractor's or technician's license.

277.1(3) Length of licensure. Licensure is normally for three years and will expire on September 30 of the third year after the license has been issued. A license which is effective on a date other than October 1 will be effective on the date on which the license is issued and will expire on the next September 30, after two years have passed from the date on which the license was issued.

661—277.2(100C) Definitions. The following definitions apply:

“*Alarm system*” means the same as defined in Iowa Code section 100C.1(1).

“*Alarm system components*” means the portion of an alarm system installation limited to mounting alarm system raceways, boxes or system devices, and pulling of system cable, not including final termination at an alarm panel or final connection of the alarm system or alarm system testing.

“Alarm system contractor” or *“contractor”* means the same as defined in Iowa Code section 100C.1(2).

“Alarm system technician” or *“technician”* means a person who is engaged in the layout, installation, repair, alteration, addition, testing, or maintenance of alarm systems and who is licensed under the provisions of this chapter to perform work authorized by that license and any endorsement pertaining thereto. An alarm system technician shall be an employee of an alarm system contractor or, if employed by anyone other than an alarm system contractor, shall perform work requiring licensing as an alarm system technician only on property owned or occupied by such employer and may obtain a license if the employer is not a licensed contractor.

“Alarm system technician trainee” means a person who is engaged in the layout, installation, repair, alteration, addition, or maintenance of alarm systems under the direct supervision of a responsible managing employee or licensed alarm system technician.

“Alarm system maintenance inspection technician” means an employee of an alarm system contractor who is engaged in maintenance inspection of fire alarm, nurse call, or security alarm systems.

“Dwelling alarm system” means a system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a fire alarm, nurse call or security alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a single-family dwelling or a single dwelling unit of a multifamily residential building and not interconnected with another dwelling alarm system. A dwelling alarm system does not mean single-station or multiple-station alarms installed in dwelling units.

“Fire alarm system” means a system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals that serves the general fire alarm needs of a building or buildings and that provides fire department or occupant notification or both. A fire alarm system does not mean single-station or multiple-station alarms installed in dwelling units.

“Installation” means hanging electrical conduits, raceways or boxes; mounting system devices; pulling system cable; activating system-initiating devices and system control units or verifying system operations to meet specifications; and performing system acceptance testing.

“Layout” means drawings, calculations and component specifications to achieve the specified system design installation. “Layout” does not include design.

“Maintenance inspection” means the same as defined in Iowa Code section 100C.1(13).

“Nurse call system” means a nurse call system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a nurse call system or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a facility required to be licensed or certified by the state pursuant to Iowa Code chapter 125, 135B, 135C, 135G, 135H, 135J, 231C, or 231D, or installed in a facility operating pursuant to Iowa Code chapter 218, 219, 223, 225, 233A, or 233B, to initiate response of on-site medical care providers.

“Responsible managing employee” means the same as defined in Iowa Code section 100C.1(14).

“Security alarm system” means a system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a security alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a building or facility to detect unauthorized entry into a building or portion of a building and to notify security personnel or building occupants or both.

661—277.3(100C) Responsible managing employee. Each alarm system contractor shall designate a responsible managing employee and may designate one or more alternate responsible managing employees. A contractor may designate more than one responsible managing employee in order to satisfy the requirements for more than one endorsement as provided in subrule 277.1(2). If more than one responsible managing employee is designated, the contractor will indicate for which responsible managing employee each designated alternate managing employee serves as an alternate.

277.3(1) The responsible managing employee or employees shall be designated in the application for licensure; and, if a responsible managing employee is no longer acting in that role, the contractor shall so notify the department, in writing, within 30 calendar days.

277.3(2) If a responsible managing employee is no longer acting in the role of responsible managing employee and the contractor has designated an alternate responsible managing employee, the alternate responsible managing employee will become the responsible managing employee and the contractor shall so notify the department, in writing, within 30 calendar days of the date on which the preceding responsible managing employee ceased to act in that role. If the contractor has designated more than one alternate responsible managing employee, the notice to the department will indicate which alternate responsible managing employee has assumed the position of responsible managing employee.

277.3(3) If a responsible managing employee designated by an alarm system contractor is no longer acting in the role of responsible managing employee and the contractor has not designated an alternate responsible managing employee, the contractor will designate a new responsible managing employee and shall notify the department, in writing, of the designation within six months of the date on which the former responsible managing employee ceased to act in that capacity. If the department has not been notified of the appointment of a new responsible managing employee within six months of the date on which a responsible managing employee ceased serving in that capacity, the department shall suspend the license of the alarm system contractor.

277.3(4) A responsible managing employee or an alternate responsible managing employee shall meet one of the requirements for the following endorsements:

a. Fire alarm system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level III or above in fire alarm systems, or

(3) Current certification by the Electronic Security Association (ESA) at level III in certified fire alarm designer (CFAD).

b. Nurse call system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by a nurse call system manufacturer, or

(3) Current certification by the NICET at level II or above in fire alarm systems, or

(4) Current certification by the ESA at level II in certified alarm technician (CAT).

c. Security alarm system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the NICET at level II or above in fire alarm systems, or

(3) Current certification by the ESA at level II in CAT.

d. Alarm system maintenance inspection:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the NICET at level II or above in fire alarm systems, or

(3) Current certification by the ESA at level II in CAT, or

(4) Current certification by the NICET level II or above in inspection and testing of fire alarm systems.

e. Dwelling unit alarm system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the NICET at level I or above in fire alarm systems, or

(3) Current certification by the ESA at level I in CAT.

277.3(5) *Training or testing approval.* Satisfactory completion of an applicable training or testing program that has been approved by the department may replace any of the endorsement requirements

of subrule 277.3(4). In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the department, such approval is required prior to acceptance of the training or testing to meet licensing requirements. Approval by the department of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the department. Any individual, firm, or organization seeking to obtain such approval may apply to the department no later than July 1 every odd-numbered year. Program information and any other documentation requested by the department for consideration shall be submitted to the department. Training and testing approved by the department will be listed on the department's licensing website.

277.3(6) License applicability. Work performed by a contractor subject to these rules shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the responsible managing employee. Work performed in the state shall not begin prior to:

- a. Receipt of a new or renewed license issued by the department to the applicant, or
- b. Receipt of written approval to perform work prior to issuance of a new or renewed license from the department to the applicant.

277.3(7) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing an alarm system set forth in any rule of the department or local fire ordinance or standard adopted by reference therein.

661—277.4(100C) Contractor licensing.

277.4(1) An alarm system contractor shall meet all of the following requirements in order to receive licensure from the department and will continue to meet all requirements throughout the period of licensure. The contractor shall notify the department, in writing, within 30 calendar days if the contractor fails to meet any requirement for licensure.

a. The contractor designates one or more responsible managing employees as provided in rule 661—277.3(100C).

b. The contractor maintains general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic alarm systems in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

(1) The carrier of any insurance coverage maintained to meet this requirement shall notify the department 30 days prior to the effective date of cancellation or reduction of the coverage.

(2) The contractor shall cease operation immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A contractor shall not initiate any installation of an alarm system which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the contractor has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

c. The contractor maintains its current registration as a contractor in accordance with Iowa Code chapter 91C and any rules promulgated thereunder, and provides a copy of the current registration certificate issued pursuant to Iowa Code chapter 91C to the department with the application.

Exception: If the contractor does not meet the definition of “contractor” for purposes of Iowa Code chapter 91C, such registration is not required. Written documentation of such exemption must be provided to the department upon application for licensure as an alarm system contractor.

d. The contractor maintains compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the contractor is performing work.

277.4(2) A license may be renewed only if the licensee has completed recertification of the applicable requirements relative to the endorsement for which the licensee is renewing.

277.4(3) An alarm system contractor license may be issued without examination to a person licensed in other jurisdictions if the conditions of Iowa Code section 272C.12 are met.

661—277.5(100C) Contractor application and fees.

277.5(1) Application. Any contractor seeking licensure as an alarm system contractor shall submit a completed application form to the department. The application shall be filed no later than 30 days prior to the date of beginning work in this state or the date on which an existing license expires. An application form may be obtained from the department or the department's website. The application form shall be submitted with all required attachments and the required application fee. An application will not be considered complete unless all required information is submitted, including required attachments and fees, and will not be processed until it is complete.

277.5(2) Licensure fee. The license fee for alarm system contractors will be \$300 for two years. If an application for licensure provides for more than one responsible managing employee pursuant to rule 661—277.3(100C), there will be an additional fee of \$50 for each responsible managing employee beyond the first. If an application for licensure provides for more than one endorsement as provided in subrule 277.1(2), there will be an additional fee of \$50 for each endorsement beyond the first. The department will waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

277.5(3) Payment. The license fee may be submitted electronically or delivered by draft, check, or money order in the applicable amount payable to the department. Cash payments are not accepted.

277.5(4) Amended license.

a. The fee for issuance of an amended license is the difference between the original license fee paid and changes in endorsement(s) or responsible managing employee(s), if applicable. The fee shall be submitted with the request for an amended licensure.

b. A contractor will request and the department will issue an amended license for any of the following reasons, and a fee does not apply:

- (1) A change in the designation of a responsible managing employee;
- (2) A change in insurance coverage; or
- (3) A change in any other material information included in or with the initial or renewal application.

A change in the location of a business is a material change; however, no fee will be charged for the issuance of an amended license if the sole reason for amending the license is to reflect a change in location which was necessitated by disaster emergency conditions and the business was located in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

c. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the department but will not require issuance of an amended license or payment of the amended license fee.

277.5(5) Attachments. Required attachments to the application for licensure are outlined on the department's website.

277.5(6) National criminal history check. Each applicant for licensure as a contractor shall submit fingerprints and the applicable fee for a national criminal history check conducted by the Federal Bureau of Investigation at the time of application for a new or renewal license.

661—277.6(100C) Technician licensure requirements. An applicant for alarm system technician licensure shall meet all of the following requirements which are applicable to the endorsements for which the applicant is applying in order to receive licensure from the department, and continue to meet all such requirements throughout the period of licensure. The technician will notify the department, in writing, within 30 calendar days if the technician fails to meet any applicable requirement for licensure.

277.6(1) The alarm system technician shall meet one of the following criteria for the following endorsements:

a. Fire alarm system installation:

- (1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or
- (2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in fire alarm systems, or

(3) Current certification by the Electronic Security Association (ESA) at level II in certified alarm technician (CAT), or

(4) Current certification by the Elite Continuing Education University (CEU) in fire alarm installation techniques (FAIT).

b. Nurse call system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by a nurse call system manufacturer, or

(3) Current certification by the NICET at level I or above in fire alarm systems, or

(4) Current certification by the ESA at level I in CAT, or

(5) Current licensure as a master electrician or journeyman electrician by the electrical examining board pursuant to Iowa Code chapter 103.

c. Security alarm system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the NICET at level I or above in fire alarm systems, or

(3) Current certification by the ESA at level I in CAT, or

(4) Current certification by the CEU in advanced electronic intrusion technician (AEIT), or

(5) Current certification by the Complete Electrical Academy at level I in Electronic Security Technician.

d. Alarm system component installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the NICET at level I or above in fire alarm systems, or

(3) Current certification by the ESA at level I in CAT, or

(4) Current licensure as a master electrician or journeyman electrician by the electrical examining board pursuant to Iowa Code chapter 103.

e. Alarm system maintenance inspection:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the NICET at level I or above in fire alarm systems, or

(3) Current certification by the ESA at level I in CAT, or

(4) Current certification by the NICET at level I or above in inspection and testing of fire alarm systems, or

(5) Current certification by the Complete Electrical Academy at level I in electronic security technician.

f. Dwelling unit alarm system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the NICET at level I or above in fire alarm systems, or

(3) Current certification by the ESA at level I in CAT, or

(4) Current certification by the CEU in alarm level I, or

(5) Current certification by the Complete Electrical Academy at level I in electronic security technician.

g. Alarm system technician trainee: Submission of a completed application no later than the first day of employment. An alarm system technician trainee may perform work which requires licensure under this chapter only under the direct supervision of a licensed alarm system technician or responsible managing employee whose license contains one or more endorsements as provided in rules 661—277.3(100C) and 661—277.6(100C), respectively, and that work must be within the scope of work authorized by the endorsements held by the supervising alarm system technician or responsible managing employee.

277.6(2) The technician shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the technician is performing work.

277.6(3) Satisfactory completion of an applicable training or testing program that has been approved by the department may replace any of the endorsement requirements of subrule 277.6(1). In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the department, such approval is required prior to acceptance of the training or testing to meet licensure requirements. Approval by the department of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the department. Any individual, firm, or organization seeking to obtain such approval may apply to the department no later than July 1 every odd-numbered year. Program information and any other documentation requested by the department for consideration shall be submitted to the department. Training and testing approved by the department will be listed on the department's licensing website.

277.6(4) Work performed by a technician or trainee subject to these rules shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the technician and will be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the responsible managing employee of the technician's employer, unless the employer is not a licensed contractor as allowed by Iowa Code chapter 100C. Work performed in the state shall not begin prior to one of the following:

- a. Receipt of a new or renewed license issued by the department to the applicant, or
- b. Receipt of written approval to perform work prior to issuance of a new or renewed license from the department to the applicant.

277.6(5) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing an alarm system set forth in any rule of the department or local fire ordinance or standard adopted by reference therein.

277.6(6) A license may be renewed only if the licensee has completed recertification of the applicable requirements relative to the endorsements for which the licensee is renewing.

277.6(7) An alarm system technician license may be issued without examination to a person licensed in other jurisdictions if the conditions of Iowa Code section 272C.12 are met.

661—277.7(100C) Technician application and fees.

277.7(1) Application. Any technician seeking licensure as an alarm system technician shall submit a completed application form to the department. The application shall be filed no later than 30 days prior to the date on which work begins in the state or on which an existing license expires, except that an application for endorsement as an alarm system technician trainee may be submitted no later than the first day of employment as an alarm system technician trainee. An application form may be obtained from the department or from the department's website. The application form shall be submitted with all required attachments and the application fee established in this rule. An application will not be considered complete unless all necessary information is submitted, including attachments and fees, and will not be processed until it is complete.

277.7(2) Licensure fee.

a. The license fee for an alarm system technician will be \$150 for two years, except that the license fee for endorsement as an alarm system technician trainee will be \$50 for one year. There will be an additional fee of \$25 for each endorsement beyond the first.

b. The department will waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

277.7(3) Payment. The certification fee may be submitted electronically or delivered by draft, check, or money order in the applicable amount payable to the department. Cash payments are not accepted.

277.7(4) Amended license.

a. The fee for issuance of an amended license is the difference between the original license fee paid and changes in endorsement(s), if applicable. The fee shall be submitted with the request for an amended license.

b. A technician will request and the department will issue an amended license for a change in any material information included in or with the initial or renewal application. A licensee will request and the department will issue an amended license for any of the following reasons and a fee does not apply:

(1) A change in employer. A licensee may only transfer the licensee's technician license to another employer if the licensee paid the license fee at the time of original application. If the licensee's previous employer paid the license fee, the licensee must reapply for a new license under the new employer and pay the license fee.

(2) A change in any other material information included in or with the initial or renewal application. A change of address is a material change.

c. Other changes in the information required in the application form shall be reported to the department but will not require issuance of an amended license or payment of the amended license fee.

277.7(5) Attachments. Required attachments to the application for license are outlined on the department's website.

277.7(6) National criminal history check. Each applicant for licensure as a technician shall submit fingerprints and the applicable fee for a national criminal history check conducted by the Federal Bureau of Investigation at the time of application for a new or renewal license.

661—277.8(100C) Complaints. Complaints regarding the performance of any licensed contractor or technician, failure of a licensed contractor or technician to meet any of the requirements established in Iowa Code chapter 100C or this chapter or any other provision of law, or operation as an alarm system contractor or technician without licensure may be filed with the department. Complaints should be as specific as possible and clearly identify the contractor or technician against whom the complaint is filed. Complaints should be submitted in writing to the department. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant may be notified of the disposition of the complaint.

661—277.9(100C) Denial, suspension, or revocation of licensure; civil penalties; and appeals. The department may deny, suspend or revoke the license of a contractor or technician or may assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as an alarm system contractor or technician is violated.

277.9(1) Denial. The department may deny an application for licensure:

a. If the applicant makes a false statement on the application form or in any other submission of information required for licensure. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for licensure established in this chapter.

c. If the applicant is currently barred for cause from acting as an alarm system contractor or technician in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as an alarm system contractor or technician and if the basis of that action reflects upon the integrity of the applicant in operating as an alarm system contractor or technician. If an applicant is found to have been previously barred for cause from operating as an alarm system contractor or technician in another jurisdiction and is no longer barred from doing so, the department will evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a licensed contractor or technician. If an applicant is denied under this provision, the applicant will be notified of the specific reasons for the denial.

e. Conviction of a felony offense, if the offense directly relates to the profession or occupation of the licensee, in the courts of this state or another state, territory or country. "Conviction" as used in this subrule includes a conviction of an offense which if committed in this state would be a felony

without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction. If an applicant is denied under this provision, the applicant will be notified of the specific reasons for the denial.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Willful or repeated violations of the provisions of this chapter.

277.9(2) Suspension. A suspension of a license may be imposed by the department for any violation of these rules or Iowa Code chapter 100C or for a failure to meet any legal requirement to operate as an alarm system contractor or technician in this state. Failure to provide any notice to the department as provided in these rules will be grounds for suspension. An order of suspension will specify the length of the suspension and will specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the license even after the period of the suspension.

277.9(3) Revocation. A revocation is a termination of a license. A license may be revoked by the department for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by an alarm system incorrectly installed by a certified contractor or technician or when information comes to the attention of the department which, if known to the department when the application was being considered, would have resulted in denial of the license. A new application for licensure from a contractor or technician whose license had previously been revoked will not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The department may specify in the revocation order a longer period than one year before a new application for licensure may be considered. When a new application for licensure from a contractor or technician whose license was previously revoked is being considered, the applicant may be denied licensure based upon the same information which was the basis for revocation even after any such period established by the department has expired.

277.9(4) Disqualifications for criminal convictions limited. A person's conviction of a crime may be grounds for the denial, revocation, or suspension of a license in circumstances authorized by Iowa Code section 272C.15.

277.9(5) Civil penalties. The department may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty will not be imposed in lieu of a revocation.

277.9(6) Appeals. Any person subject to denial, suspension, or revocation of a license, or any civil penalty imposed upon a licensed contractor or technician under this rule may appeal by requesting a contested case hearing, in writing, within 14 days. An appeal of a civil penalty is subject to the provisions of 481—Chapters 9 and 10 governing contested cases.

These rules are intended to implement Iowa Code chapter 100C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 500
“Electrician and Electrical Contractor Licensing Program—Organization and Administration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103.6, 103.10 and 103.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 103; 2023 Iowa Acts,
Senate File 514; and Executive Order 10 (Jan. 10, 2023)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes promulgation of new Chapter 500, “Electrician and Electrical Contractor Licensing Program—Organization and Administration.” This rulemaking implements Iowa Code chapter 103 and 2023 Iowa Acts, Senate File 514, in accordance with the goals and directives of Executive Order 10 (Jan. 10, 2023). This rulemaking proposes a succinct description of the program and Electrical Examining Board and sets forth definitions pertinent to the administration of the program.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Since this chapter sets forth only the description of and pertinent definitions used in implementing the Electrician and Electrical Contractor Licensing Program mandated by Iowa Code chapter 103, there are no costs associated with this particular chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
The general public utilizing electricians and electrical contractors, as well as the professionals themselves, benefit from the proposed rulemaking. Establishing clear and consistent minimum licensing requirements, including consistent definitions throughout the program, ensures that electricians are competent to conduct safe electrical installations and the rules are easily utilized by licensees. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public and property during their practice. Electricians are professionals who require certain skills and training to protect the public and property from hazards arising from the use of electricity.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

As stated above, this chapter merely sets forth the description of and pertinent definitions used in implementing the Electrician and Electrical Contractor Licensing Program mandated by Iowa Code chapter 103. There are no costs associated with this particular chapter.

- Qualitative description of impact:

Rules that maintain clear and consistent definitions have a positive impact on administration of the program because they are easily utilized by the agency, public, and regulated professionals.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Since this chapter merely sets forth the description of and pertinent definitions used in implementing the Electrician and Electrical Contractor Licensing Program mandated by Iowa Code chapter 103, there are no costs associated with this particular chapter.

- Anticipated effect on state revenues:

As this chapter merely sets forth the description of and pertinent definitions used in implementing the Electrician and Electrical Contractor Licensing Program mandated by Iowa Code chapter 103, there is no anticipated effect on state revenues from this particular chapter.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

As set forth above, this particular chapter does not have costs associated with it, and thus the identified benefits clearly outweigh the costs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has included only pertinent and useful definitions within this chapter, and thus is believed to be achieving the goals of this proposed rulemaking in the least intrusive or costly manner.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

As related to implementation of Iowa Code chapter 103 as a whole, the Board has not identified a more cost-effective alternative to the licensure of electricians. The Board believes all current requirements ensure public safety, help protect property from hazards arising from the use of electricity, and ensure a minimum competency of service is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rules provide consistency related to licensure. Particular to this chapter, providing definitions is the only method reasonably available to ensure consistency of interpretation of pertinent rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This proposed chapter does not present any substantial impact on small business because it merely provides definitions.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 500 and adopt the following **new** chapter in lieu thereof:

CHAPTER 500
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—
ORGANIZATION AND ADMINISTRATION

661—500.1(103) Establishment of program. The electrician and electrical contractor licensing program is established in the department of inspections, appeals, and licensing. The program is under the direction of the electrical examining board. Contact information of the board office can be found on the department's website.

661—500.2(103) Definitions. The following definitions apply to all rules adopted by the electrical examining board.

"Approved by the board" means the approval of any item, test or procedure by the electrical examining board by adoption of a resolution at a meeting of the board, provided that the approval has not been withdrawn by a later resolution of the board. A list of any such items, tests, or procedures that have been approved by the board is available from the board office or from the board website.

"Complete criminal record" means the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

"Conviction" means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. "Conviction" includes Alford pleas and pleas of nolo contendere.

"Department" means the department of inspections, appeals, and licensing.

"Directly relates" or "directly related" means either that the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession; or that the circumstances under which an offense was committed are customary to the profession.

"Disqualifying conviction" or "disqualifying offense" means a conviction directly related to the practice of the profession.

"Division" means the building and construction bureau of the department of inspections, appeals, and licensing.

"Documented experience" means experience which an applicant for licensing has completed and which has been documented by the applicant's completion and submission of a sworn affidavit or other evidence requested by the board.

"Eligibility determination" means the process by which a person who has not yet submitted a completed license application may request that the board determine whether one or more of the person's convictions are disqualifying offenses that would prevent the individual from receiving a license or certification.

“Emergency installation” means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), should be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

“Final agency action” means the issuance, denial, suspension, or revocation of a license. If an action is subject to appeal, “final agency action” has occurred when the administrative appeal process provided for in 661—Chapter 503 has been exhausted or when the deadline for filing an appeal has expired.

“Full-time” means a minimum of 1,700 hours of work in a one-year period.

“Issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

“Registered apprenticeship program” means an electrical apprenticeship program registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or an electrical apprenticeship program registered with a state agency whose registration program is accepted by the Bureau of Apprenticeship and Training in lieu of direct registration with the Bureau of Apprenticeship and Training.

“Residential electrical work” means electrical work in a residence in which there are no more than four living units within the same building and includes work to connect and work within accessory structures, which are structures no greater than 3,000 square feet in floor area, not more than two stories in height, the use of which is incidental to the use of the dwelling unit or units, and located on the same lot as the dwelling unit or units.

“Transferring jurisdiction” means the specific issuing jurisdiction on which an applicant relies to seek licensure in Iowa by verification under this chapter.

These rules are intended to implement Iowa Code chapters 17A, 103 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 502
“Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures,
and Fees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103.6, 103.10 and 103.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 103 and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes promulgation of Chapter 502, “Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees.” It implements Iowa Code chapters 103 and 272C and 2023 Iowa Acts, House File 514, in accordance with the goals and directives of Executive Order 10 (Jan. 10, 2023). This rulemaking sets minimum standards for entry into the electrical profession and articulates the processes by which individuals apply for licensure as an electrician in the state of Iowa, as directed in Iowa Code chapter 103. In particular, the proposed rules provide for the categories of licenses and requirements for each license type; set forth the terms and fees for the license types; and set forth procedures for applying for a license, standards for obtaining a license, and potential bases for the denial of a license. These requirements ensure public safety by ensuring that any individual or business entering the profession has minimum competency.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there are costs to the applicant/licensee. Costs associated with complying with the minimum requirements to enter into the profession are at the expense of the licensee and include initial and renewal license fees, as required by Iowa Code section 103.19. A list of all applicable initial and renewal licensee fees are set forth in proposed rule 661—502.3(103).

The Electrical Examining Board believes all such fees are appropriate for sustaining the program and in line with fee requirements of similar jurisdictions. For example, the fee for an initial journeyman electrician license in the state of Iowa is \$75 for a three-year term (\$25 per year) and the renewal fee is

\$75 for a three-year term (\$25 per year). These costs are comparable to 17 other states' initial and renewal licensing fees for electricians. The 17 states' average initial and renewal licensing fee for electricians is \$43 per year.

The licensee would also have costs related to educational requirements and exam requirements. The Board has not identified an exact cost of education for this field because the cost varies depending on the school the licensee chooses to attend to meet those requirements.

Costs to the agency include administrative costs to administer the program. Such costs include staff salaries to support the work of the Board, including staff review of applications for initial and renewal licenses and fielding administrative inquiries on licensing. As discussed in detail below, costs to the agency in administering the program are covered by the licensing and inspection fees required by Iowa Code sections 103.19, 103.25, and 103.32.

- Classes of persons that will benefit from the proposed rulemaking:

The general public utilizing electricians and electrical contractors, as well as the professionals themselves, benefit from the proposed rules. Establishing clear and consistent minimum licensing requirements ensures that electricians are competent to perform safe electrical installations. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public and property. Electricians are professionals who require certain skills and training to protect the public and property from hazards arising from the use of electricity.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Educational institutions provide the academic training for electricians to obtain their license in the state of Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the exam. Because the cost of education varies depending on the institution the person attends, the Board is unable to put an exact cost on education or exam preparation.

Licensee fees are set forth in proposed rule 661—502.3(103) and are identical to the current fees. Presently, there are 18,670 licensed professionals. The Board collected \$3.4 million in fees over a three-year period. These fees support the totality of the program implementing Iowa Code chapter 103.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee, property, and consumer. The cost of inaction would be increasing the potential for injury to the public and potential damage to property by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency associated with implementation and enforcement of the administrative chapters implementing Iowa Code chapter 103 under current review pursuant to Executive Order 10 (661—Chapters 500, 501, 502, 503, and 505) include the staff time needed to manage applications, submissions, and inquiries related to initial licenses, renewals, reinstatements, complaints/discipline, and continuing education. This specifically includes approximately 4.0 full-time equivalent (FTE) positions at an annual cost of approximately \$388,300. The costs also include expenses associated with licensing software and technology at an annual cost of approximately \$60,000. Notably, costs related to the entire program for implementing Iowa Code chapter 103 also include costs associated with approximately 19 FTE positions for electrical inspectors (administrative chapters specific to this component of the program are scheduled for review pursuant to Executive Order 10 in 2024).

- Anticipated effect on state revenues:

In accordance with Iowa Code section 103.19, license fees are utilized to support administration of the entire electrician and electrical contractor program implementing Iowa Code chapter 103. License fees generated are approximately \$3.4 million over a three-year period. Notably, license fees offset the costs of the entire program implementing Iowa Code chapter 103, which includes 19 FTE positions for

electrical inspectors in addition to the 4.0 FTE positions for licensing discussed above. License fees correlate with expenses of administering the program pursuant to Iowa Code chapter 103.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

All current requirements are believed to be necessary to ensure public safety and ensure a minimum competency of service is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rules provide for consistency related to the licensure of electricians in other states, which makes obtaining licensure in multiple states less burdensome for the regulated professionals.

As set forth above, the costs to licensees in the state of Iowa are similar to those of surrounding states, and licensing fees are appropriate to support administration of the program implementing Iowa Code chapter 103. The surrounding states all require similar licensing procedures for electricians.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a more cost-effective alternative to the licensure of electricians. The Board believes all current requirements ensure public safety and ensure a minimum competency of service is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rules provide consistency related to the licensure of electricians in other states, which makes obtaining licensure in multiple states less burdensome for applicants.

Notably, due to the realignment implemented pursuant to 2023 Iowa Acts, Senate File 514, this Board is now part of the Department of Inspections, Appeals, and Licensing. The Department and Board continue to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. The revisions to these rules support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified alternative methods for the licensure of electricians. The Board believes all current requirements ensure public safety, help protect property from hazards arising from the use of electricity, and ensure that a minimum competency of service is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of electricians in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rules are meant to ensure public safety in terms of licensing requirements for electricians. While some electricians likely are running a small business of their own, some also work for large corporations. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business. If a small business licensee identified a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 502 and adopt the following new chapter in lieu thereof:

CHAPTER 502
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—LICENSING
REQUIREMENTS, PROCEDURES, AND FEES

661—502.1(103) License categories and authority.

502.1(1) The following license categories are established:

- a. Electrical contractor.
- b. Residential electrical contractor.
- c. Master electrician, class A.
- d. Master electrician, class B.
- e. Residential master electrician.
- f. Journeyman electrician, class A.
- g. Journeyman electrician, class B.
- h. Residential electrician.
- i. Apprentice electrician.
- j. Special electrician.
- k. Unclassified person.
- l. Inactive master electrician.

502.1(2) A person who holds any class of license issued by the board, other than a class B license, a residential electrical contractor license, a residential master electrician license, or a residential electrician license, may perform the work authorized by that license anywhere within the state of Iowa. A class B license can be subject to limitations imposed by a political subdivision through a local ordinance pursuant to Iowa Code section 103.29(4). A person who holds a residential electrical contractor license, a residential master electrician license, or a residential electrician license may perform the work authorized by that license anywhere within the state of Iowa except within a political subdivision which has, by local ordinance, limited the use of such a license.

502.1(3) Except as otherwise provided by Iowa Code chapter 103, a person who does not have a current valid license cannot perform work as an electrician or as an unclassified person. A person cannot perform work which requires licensing and which is not specifically authorized under the license issued.

502.1(4) An apprentice electrician or an unclassified person, while performing electrical work, shall be directly supervised at all times by a master electrician or a journeyman electrician or, while performing residential electrical work only, by a residential master electrician, a residential electrician, or a special residential electrician. A master electrician, a journeyman electrician, a residential master electrician, or

a residential electrician is not permitted to directly supervise more than three apprentice electricians or unclassified persons, or both, at once.

502.1(5) A journeyman electrician or a residential electrician may only work under the general direction of a master electrician or, while performing residential electrical work only, under the general direction of a residential master electrician.

661—502.2(103) License requirements.

502.2(1) An electrical contractor license may be issued to a person who submits an application with the applicable fee, who holds or employs a person who holds an active master electrician license, who is registered as a contractor with the labor services division of Iowa workforce development. An electrical contractor license issued to a person who holds a class B master electrician license is subject to the same restriction of use as is the class B master electrician license.

502.2(2) A residential electrical contractor license may be issued to a person who is licensed as a class A master electrician, a class B master electrician, or a residential master electrician and who is registered with the state of Iowa as a contractor pursuant to Iowa Code chapter 91C.

502.2(3) A class A master electrician license may be issued to a person who submits to the board a completed application with the applicable fee and who meets one of the following:

a. Has completed one year of experience as a licensed journeyman electrician, and has passed a supervised written examination for master electrician approved by the board with a score of 70 or higher within 24 months of submission of a new application; or

b. As of December 31, 2007, held a current valid license as a master electrician issued by a political subdivision in Iowa, the issuance of which required passing a supervised written examination approved by the board, and one year of experience as a journeyman electrician; or

c. Holds a current class B master electrician license and has passed a supervised written examination for master electrician approved by the board with a score of 70 or higher within 24 months of submission of a new application.

502.2(4) A class B master electrician license may be issued to a person who submits to the board a completed application with the applicable fee; who presents credible evidence of having worked for a total of 16,000 hours of cumulative experience as a master electrician, of which at least 8,000 hours were worked since January 1, 1998; and whose experience as a master electrician began on or before January 1, 1998.

502.2(5) A residential master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, holds a current residential electrician or journeyman electrician license, has 2,000 hours of verified experience as a residential electrician or a journeyman electrician, and has passed a residential master electrician examination approved by the board with a score of 70 or higher within 24 months of submission of a new application.

502.2(6) A class A journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee and who meets one of the following:

a. Has successfully completed a registered apprenticeship program, has passed a supervised written examination for journeyman electrician approved by the board with a score of 70 or higher within 24 months of submission of a new application, and has completed four years of experience as an apprentice electrician.

b. Holds a current class B journeyman electrician license and has passed a supervised written examination for journeyman electrician approved by the board with a score of 70 or higher within 24 months of submission of a new application.

c. Holds a current electrician license in another state, has passed a supervised written examination for journeyman electrician approved by the board with a score of 70 or higher within 24 months of submission of a new application, and has satisfied the sponsorship requirements for testing for a journeyman class A license by providing evidence of all of the following:

(1) Current licensure as a journeyman or master electrician from another state which required passing a test sponsored by that state.

(2) Completion of 18 hours of continuing education units approved by the board.

(3) Completion of 1,000 hours of work in Iowa as an unclassified person.

d. Holds a current license issued by the board; has passed a supervised written examination for journeyman electrician approved by the board with a score of 70 or higher within 24 months of submission of a new application; has completed 54 hours of continuing education approved by the board; and has completed 16,000 hours of electrical work while licensed by the board, except as a special electrician, as verified by a master electrician licensed by the board. The 16,000 hours is to include at least the following minimum number of hours of work on commercial or industrial installations in the categories indicated: 500 hours of preliminary work, 2,000 hours of rough-in work, 2,000 hours of finish work, 2,000 hours of lighting and service work, 500 hours of troubleshooting, and 500 hours of motor control work. At least 4,000 hours of the 16,000 hours is to be completed by the applicant within the five years immediately preceding the submission date of the application.

e. Holds a current license issued by the board as a residential electrician or residential master electrician, has passed a supervised written examination for journeyman electrician approved by the board with a score of 70 or higher within 24 months of submission of a new application, and has completed 4,000 hours of work on commercial or industrial electrical installations while licensed by the board, as verified by a master electrician licensed by the board. The 4,000 hours is to include at least the following minimum numbers of hours in the categories indicated: 100 hours of preliminary work, 500 hours of rough-in work, 500 hours of finish work, 500 hours of lighting and service work, 100 hours of troubleshooting, and 100 hours of motor control work.

f. Holds a current license issued by the board, has satisfactorily completed an approved postsecondary electrical education program, has passed a supervised written examination for journeyman electrician approved by the board with a score of 70 or higher within 24 months of submission of a new application, and, subsequent to beginning the postsecondary electrical education program, has completed at least 6,000 hours of electrical work while licensed by the board, as verified by a master electrician licensed by the board.

502.2(7) A class B journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee; who presents credible evidence of having worked for a total of 16,000 hours of cumulative experience as a journeyman electrician or master electrician, of which at least 8,000 hours were worked since January 1, 1998; and whose experience as a journeyman electrician or master electrician began on or before January 1, 1998.

502.2(8) A residential electrician license may be issued to a person who submits to the board a completed application with the applicable fee and who meets one of the following:

a. Has completed 6,000 hours of experience as an apprentice electrician and has passed a residential electrician examination approved by the board. An applicant may take the examination after completing 5,000 hours of experience as an apprentice electrician, although the license will not be issued until the applicant has completed 6,000 hours of such experience; or

b. Has completed 4,000 hours of experience working under the direct supervision of a residential master electrician, a residential electrician, a master electrician, or a journeyman electrician; has successfully completed a minimum of one academic year of an electrical trade school approved by the board; and has passed a residential electrician examination approved by the board; or

c. Has completed 8,000 hours of verified experience as a licensed unclassified person including at least 2,000 hours of verified work experience in residential wiring and has passed a residential electrician examination approved by the board; or

d. Has successfully completed a registered residential electrician apprenticeship program and passed a supervised written residential electrician examination approved by the board with a score of 70 or higher within 24 months of submission of a new application.

502.2(9) A special electrician license may be issued to a person who submits to the board a completed application with the applicable fee and who meets the qualifications for any endorsement entered on the license. Each special electrician license is eligible to carry one or more of the following endorsements:

a. Endorsement 1, "Irrigation System Wiring," may be included if requested and the applicant has passed a supervised examination approved by the board or has completed two years, or 4,000 hours, of documented experience in the wiring of irrigation systems.

b. Endorsement 2, “Disconnecting and Reconnecting Existing Air Conditioning and Refrigeration Systems,” may be included if requested and the applicant has passed a supervised examination approved by the board or has completed two years of documented experience in the disconnecting and reconnecting of existing air conditioning and refrigeration systems.

c. Endorsement 3, “Sign Installation,” may be included if requested. This endorsement does not authorize the holder to connect power to a sign that has a voltage greater than 220V and an ampere rating greater than 20 amps. Initial installation or upgrading of the branch circuits supplying power to the sign may only be completed by a licensed master electrician or by a licensed journeyman electrician under the supervision of a master electrician.

502.2(10) An apprentice electrician license may be issued to a person who submits a completed application to the board with the applicable fee and who is participating in a registered apprenticeship program. A person may hold an apprentice electrician license for no more than six years from the original date of licensing unless an extension is granted by the board based upon a documented hardship.

502.2(11) A license as an unclassified person may be issued to a person who submits a completed application to the board with the applicable fee and who is employed by a licensed electrical contractor. Any person who holds a current license issued by the board, excluding special electrician licenses, may work as an unclassified person without holding an unclassified person license.

502.2(12) In lieu of renewal of the active master electrician license, an inactive master electrician license may be issued to a holder of a master electrician license whose license is due for renewal and who requests placement in inactive status. It is the responsibility of the holder of an inactive license to maintain all requirements which would apply for an active master electrician license, except for payment of the fee for an active license, during the term of the inactive license. If the license holder fails to meet any such requirement during the term of the inactive license, the license holder will not be entitled to reinstatement of an active license. If the license holder continues to meet all such requirements while holding an inactive license, the license holder may obtain an active master electrician license by surrendering the inactive master electrician license, filing an application for reinstatement, and paying the applicable license fee. The holder of an inactive license who seeks reinstatement of an active license will not receive any refund of the fee paid for the inactive license. A person who holds an inactive license cannot perform work which requires the person to be a holder of that license but may perform work authorized by any active license issued by the board which the person holds.

502.2(13) Retaking an examination. If passage of an examination is a requirement for issuance of a license:

a. An applicant who has taken the examination for a license twice and has failed the examination twice cannot retake the examination until after waiting six months and completing 12 hours of continuing education approved by the board on subjects related to the standards specified in 661—Chapter 504. After satisfying the requirements of this paragraph, the applicant may take the examination two additional times, or a maximum of four times.

b. An applicant who has satisfied the conditions of paragraph “*a*” and who has taken the examination two additional times, or a total of four times, and has failed the examination four times cannot retake the examination until after waiting an additional six months and completing an additional 12 hours of continuing education approved by the board on subjects related to the standards specified in 661—Chapter 504 before taking the examination again. After satisfying the requirements of this paragraph, the applicant may take the examination two additional times, or a maximum of six times.

c. An applicant who has satisfied the conditions of paragraph “*b*” and who has taken the examination two additional times, or a total of six times, and has failed the examination six times cannot retake the examination any additional times unless approved to do so by the board. An applicant who wishes to take an examination after failing it six times may petition the board to allow the applicant to take the examination again after waiting an additional six months. The board may request that an applicant appear personally before the board when considering the petition.

502.2(14) Reciprocal journeyman licensing. A journeyman class A license may be issued, without examination, to a person who holds a license from another state provided that:

a. The board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the examination required for the license issued by the other state and the examination required for the Iowa license to be issued; and

b. The applicant has successfully completed a supervised written examination approved by the other state with a score of 70 or higher in order to obtain the license from the other state; and

c. The applicant holds an applicable license from the other state at the time the application for an Iowa license is filed and has held the applicable license from the other state continuously for one year at the time the application for an Iowa license is filed; and

d. The applicant has submitted:

(1) A completed application for the Iowa license;

(2) A copy of the applicable license from the other state, clearly showing the license number and any other identifying information;

(3) The applicable fee;

(4) The sworn affidavit required under subparagraph 502.2(14)“e”(2), if applicable; and

(5) Any other information requested by the board; and

e. The applicant has either:

(1) Completed an approved apprenticeship program; or

(2) Completed 16,000 hours of electrical work as an electrician licensed by the other state, as documented by submission of a sworn affidavit signed by the applicant.

502.2(15) Reciprocal master licensing. A master class A license may be issued, without examination, to a person who holds an equivalent license from another state provided that:

a. The board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the examination required for the license issued by the other state and the examination required for the Iowa license to be issued; and

b. The applicant has successfully completed a supervised written examination approved by the other state, with a score of 70 or higher, in order to obtain the license from the other state; and

c. The applicant holds an applicable license from the other state at the time the application for an Iowa license is filed and has held the applicable license from the other state continuously for one year at the time the application for an Iowa license is filed; and

d. The applicant has submitted:

(1) A completed application for the Iowa license;

(2) A copy of the applicable license from the other state, clearly showing the license number and any other identifying information;

(3) The applicable fee;

(4) Any other information requested by the board, which may include, but is not limited to, additional evidence that the person’s license from the other state is currently valid; and

e. The applicant has either:

(1) Completed an approved apprenticeship program; or

(2) Completed 16,000 hours of electrical work as an electrician licensed by the other state, documented by a sworn affidavit signed by the applicant.

661—502.3(103) License terms and fees. The following table sets out the length of term of each license and the fee for the license.

| License Type | Term | Fee |
|-----------------------------------|---------|-------|
| Electrical Contractor | 3 years | \$375 |
| Residential Electrical Contractor | 3 years | \$375 |
| Master Electrician, Class A | 3 years | \$375 |
| Master Electrician, Class B | 3 years | \$375 |
| Residential Master Electrician | 3 years | \$375 |
| Journeyman Electrician, Class A | 3 years | \$75 |

| License Type | Term | Fee |
|---------------------------------|---------|------|
| Journeyman Electrician, Class B | 3 years | \$75 |
| Residential Electrician | 3 years | \$75 |
| Special Electrician | 3 years | \$75 |
| Apprentice Electrician | 1 year | \$20 |
| Unclassified Person | 1 year | \$20 |
| Inactive Master Electrician | 3 years | \$75 |

502.3(1) If a license is issued for less than the period of time specified in the table above, the fee will be prorated according to the number of months for which the license is issued.

502.3(2) A licensee who is on active military deployment for 91 or more consecutive calendar days during the term of a license may have the license period tolled as follows. “Tolled” means that the expiration date of the license will be delayed for the period of time during which the license term is tolled.

a. A licensee who is on active military deployment for 91 or more consecutive calendar days during a licensing period may have the license terms tolled for one year.

b. A licensee who is on active military deployment for 366 or more consecutive calendar days during a licensing period may have the license terms tolled for two years.

c. A licensee who is on active military deployment for 91 or more consecutive calendar days but fewer than 366 consecutive calendar days may petition the board to have the license tolled for two years upon a showing of a special hardship which would not be alleviated by tolling the license term for only one year.

d. A licensee who requests that the term of a license be tolled pursuant to this subrule will provide a copy of military orders showing the beginning and ending dates of the deployment or deployments which are the basis for the request.

502.3(3) A licensee may obtain a replacement license for a license that has been lost. To order a replacement license, the licensee will notify the board office in writing that the license has been lost and will provide any information needed by the board office, which may include, but is not limited to, the license number, the name of the licensee, and a description of the circumstances of the loss, if known. The fee for issuance of a replacement license is \$15.

EXCEPTION: If a licensee who is located in an area covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6 which is currently in force or has been in force within the previous 90 days certifies to the board that the license was lost as a direct result of conditions which relate to the issuance of the disaster emergency proclamation, the fee for replacement of the license can be waived.

502.3(4) Refunds of license fees can be made under the following circumstances:

a. If an error on the part of the staff or the applicant or licensee has resulted in an overpayment of fees, the refund can be in the amount of overpayment and can be made if the overpayment is discovered by staff of the board or if the overpayment is discovered by the applicant or licensee and the applicant or licensee requests a refund.

b. If an applicant for an initial license or a renewal license dies prior to the effective date of a license for which the applicant has applied and paid the applicable fee, the license fee can be refunded to the estate of the applicant upon receipt of a request from the estate of the applicant, accompanied by a certified copy of the death certificate.

502.3(5) The fee for submitting a petition for eligibility determination as defined in subrule 502.8(2) is \$25.

502.3(6) The board will waive any fee charged to an applicant for a license if the applicant’s household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

661—502.4(103) Disqualifications for licensure. An application for a license can be denied if any of the following apply:

502.4(1) The applicant fails to meet the requirements for the license for which the applicant has applied or the applicant fails to provide adequate documentation of any requirement.

502.4(2) The applicant has previously had a license revoked or suspended by the board, and the circumstances which formed the basis of the revocation or suspension have not been corrected. If a license was revoked or suspended and conditions were imposed for the restoration of the license, licensure will be denied unless those conditions have been met.

502.4(3) The applicant has been denied, for cause, a license to work, or a license as an electrician has been revoked, for cause, in any other state or political subdivision and the applicant has not subsequently received a license from the state or political subdivision which denied or revoked the license. An applicant who has been denied a license pursuant to this provision may apply to the board for a license and, upon a showing of evidence satisfactory to the board that the condition or conditions which led to the denial or revocation no longer apply, the board may grant the license to the applicant.

502.4(4) The applicant falsifies or fails to provide any information requested in connection with the application or falsifies any other information provided to the board in support of the application.

502.4(5) The applicant has been convicted of a disqualifying offense in the courts of this state or another state, territory, or country. A file-stamped copy of the final order or judgment of conviction or plea of guilty in this state or another state constitutes conclusive evidence of the conviction.

502.4(6) The applicant has unpaid fees due to the board which are 120 days or more past due. The license for which the applicant applied may be issued after the fees are paid if the applicant is not otherwise disqualified from obtaining the license.

661—502.5(103) License application.

502.5(1) Any person seeking a license from the board is to submit a completed application to the board accompanied by the applicable fee payable by check, money order, or warrant to the Iowa department of inspections, appeals, and licensing. The memo area of the check should read “Electrician Licensing Fees.” The application is to be submitted on the form prescribed by the board, which may be obtained from the board office.

502.5(2) Upon receipt of a completed application, the board executive secretary or designee has discretion to:

a. Authorize the issuance of a license, certification, or examination application.

b. Refer the application to a committee of the board for review and consideration when the board executive secretary determines that matters raised in or revealed by the application, including but not limited to prior criminal history, chemical dependence, competency, physical or psychological illness, professional liability claims or settlements, professional disciplinary history, education or experience, are relevant in determining the applicant’s qualifications for a license, certification, or examination. Matters that may justify referral to a committee of the board include, but are not limited to:

(1) Prior criminal history, which is reviewed and considered in accordance with Iowa Code chapter 272C and rule 661—502.8(272C).

(2) Chemical dependence.

(3) Competency.

(4) Physical or psychological illness or disability.

(5) Judgments entered on, or settlements of, claims, lawsuits, or other legal actions related to the profession.

(6) Professional disciplinary history.

(7) Education or experience.

502.5(3) Following review and consideration of an application referred by the board executive secretary, the committee may at its discretion:

a. Authorize the issuance of the license, certification, or examination application.

b. Recommend to the board denial of the license, certification, or examination application.

c. Recommend to the board issuance of the license or certification under certain terms and conditions or with certain limitations.

d. Refer the license, certification, or examination application to the board for review and consideration without recommendation.

502.5(4) Following review and consideration of a license, certification, or examination application referred by the committee, the board can:

a. Authorize the issuance of the license, certification, or examination application;

b. Deny the issuance of the license, certification, or examination application; or

c. Authorize the issuance of the license or certification under certain terms and conditions or with certain limitations.

502.5(5) The committee or board can request an applicant to appear for an interview before the committee or the full board as part of the application process.

661—502.6(103) Restriction of use of class B licenses by political subdivisions. A political subdivision may disallow or limit the use of a class B license to perform electrical work within the geographic limits of that subdivision through adoption of a local ordinance. A copy of any such ordinance is to be filed with the board office prior to the effective date of the ordinance. If a class B license holder held a license issued or recognized by a political subdivision on December 31, 2007, that political subdivision cannot restrict the license holder from performing work which would have been permitted under the terms of the license issued or recognized by the political subdivision.

EXCEPTION: An ordinance restricting or disallowing electrical work by holders of class B licenses will not apply to work which is not subject to the issuance of permits by the political subdivision.

661—502.7(103) Financial responsibility. Any holder of an electrical contractor license or any holder of an electrician license who is not employed by a licensed electrical contractor and who contracts to provide electrical work which requires a license issued pursuant to 661—Chapters 500 through 503 is to, at all times, maintain insurance coverage as provided in this rule.

502.7(1) The licensee is to maintain general and complete operations liability insurance in the amount of at least \$1 million for all work performed which requires licensing pursuant to 661—Chapters 500 through 503.

a. The carrier of any insurance coverage maintained by the licensee to meet this requirement will notify the board 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The licensee will cease operation immediately if the insurance coverage required by this rule is no longer in force and other insurance coverage meeting the requirements of this rule is not in force. A licensee will not initiate any electrical work which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this rule and of which the licensee has received notice, unless new insurance coverage meeting the requirements of this rule has been obtained and will be in force upon cancellation of the prior coverage.

502.7(2) Reserved.

661—502.8(272C) Use of criminal convictions in eligibility determinations and initial licensing decisions.

502.8(1) License application. Unless an applicant for licensure petitions the board for an eligibility determination, the applicant's convictions will be reviewed when the board receives a completed license application.

a. *Full disclosure.* An applicant is to disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

b. *Documentation and personal statement.* An applicant with one or more convictions is to submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

c. Rehabilitation. An applicant will, as part of the license application, submit all evidence of rehabilitation that the applicant wishes to be considered by the board. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15. An applicant with one or more disqualifying offenses who has been found rehabilitated still needs to satisfy all other requirements for licensure.

d. Nonrefundable fees. Any application fees will not be refunded if the license is denied.

502.8(2) Eligibility determination. An individual who has not yet submitted a completed license application may petition the board for an eligibility determination. An individual with criminal convictions is not required to petition the board for an eligibility determination before applying for a license. To petition the board for an eligibility determination, a petitioner is to submit all of the following:

- a.* A completed eligibility determination form, which is available on the board's website;
- b.* The complete criminal record for each of the petitioner's convictions;
- c.* A personal statement regarding whether each conviction directly relates to the practice of the profession and why the board should find the petitioner rehabilitated;
- d.* All evidence of rehabilitation that the petitioner wants the board to consider; and
- e.* Payment of a nonrefundable fee in the amount of \$25.

502.8(3) Appeal. A petitioner found ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The department's rules governing contested case proceedings apply unless otherwise specified in this rule. If the petitioner or applicant fails to file a timely appeal, the board's written decision will become a final order.

a. Presiding officer. The presiding officer will be the board. However, any party to an appeal of a license denial or ineligibility determination may file a written request, in accordance with rule 661—10.306(17A), requesting that the presiding officer be an administrative law judge. Additionally, the board may, on its own motion, request that an administrative law judge be assigned to act as presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered will be a proposed decision.

b. Burden. The office of the attorney general represents the board's initial ineligibility determination or license denial and has the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense. If the office of the attorney general satisfies this burden by a preponderance of the evidence, the burden of proof shifts to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

c. Judicial review. A petitioner or applicant must appeal an ineligibility determination or a license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding is to be made in accordance with Iowa Code chapter 17A.

502.8(4) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner cannot submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant cannot submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

661—502.9(272C) Licensure by verification. Licensure by verification is available under the following circumstances.

502.9(1) Eligibility. A person may seek licensure by verification if all of the following criteria are satisfied:

- a.* The person is licensed, certified, or registered in at least one other issuing jurisdiction;

b. The person has been licensed, certified, or registered by another issuing jurisdiction for at least one year;

c. The scope of practice in the transferring jurisdiction is substantially similar to the scope of practice in Iowa;

d. The person's license, certification, or registration is in good standing in all issuing jurisdictions in which the person holds a license, certificate, or registration; and

e. The person either:

(1) Establishes residency in the state of Iowa pursuant to rule 701—38.17(422); or

(2) Is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station.

502.9(2) Board application. The applicant is to submit all of the following:

a. A completed application for licensure by verification.

b. Payment of the appropriate fee or fees.

c. A verification form completed by the transferring jurisdiction, verifying that the applicant's license, certificate, or registration in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form will be sent directly from the transferring jurisdiction to the board.

d. Proof of current Iowa residency, or proof of the military member's official permanent change of station. To demonstrate Iowa residency, the applicant will submit proof that:

(1) The applicant currently maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the calendar year; and

(2) One or more of the following:

1. The applicant claims a homestead credit or military tax exemption on a home in Iowa, or

2. The applicant is registered to vote in Iowa, or

3. The applicant maintains an Iowa driver's license, or

4. The applicant does not reside in an abode in any other state for more days of the calendar year than the individual resides in Iowa.

e. Documentation of the applicant's complete criminal record, including the applicant's personal statement regarding whether each offense directly relates to the practice of the profession.

f. A copy of any relevant disciplinary documents, if another issuing jurisdiction has taken disciplinary action against the applicant.

502.9(3) Applicants with prior discipline. If another issuing jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person whose license was revoked, or a person who voluntarily surrendered a license, in another issuing jurisdiction is ineligible for licensure by verification.

502.9(4) Applicants with pending licensing complaints or investigations. If an Iowa applicant is concurrently subject to a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another issuing jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

661—502.10(272C) Licensure by work experience in jurisdictions without licensure requirements.

502.10(1) Work experience.

a. An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a license to practice the profession may be considered to have met the applicable educational and training requirements if the person has at least three years of full-time work experience within the four years preceding the date of application for initial licensure. For each application submitted under this rule, the board will determine whether the applicant's prior work experience was substantially similar in nature and scope to a training or education program typically applicable for the license sought.

b. The applicant will need to satisfy all other license requirements, including passing any required examinations, to receive a license.

502.10(2) Documentation. An applicant seeking to substitute work experience in lieu of satisfying applicable education or training requirements bears the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of current residency in the state of Iowa pursuant to rule 701—38.17(17A), or proof of the military member's official permanent change of station. To demonstrate Iowa residency, the applicant is to submit proof that:

(1) The applicant currently maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the calendar year; and

(2) One or more of the following:

1. The applicant claims a homestead credit or military tax exemption on a home in Iowa, or

2. The applicant is registered to vote in Iowa, or

3. The applicant maintains an Iowa driver's license, or

4. The applicant does not reside in an abode in any other state for more days of the calendar year than the individual resides in Iowa.

b. Proof of three or more years of full-time work experience within the four years preceding the application for Iowa licensure, which demonstrates that the work experience was substantially similar in nature and scope to a training or education program typically applicable for the license sought. Proof of work experience may include, but is not limited to:

(1) A letter from the applicant's prior employer or employers documenting the applicant's dates of employment and scope of practice;

(2) Paychecks or pay stubs; or

(3) If the applicant was self-employed, business documents filed with the secretary of state or other applicable business registry or regulatory agency in the other jurisdiction.

c. Proof that the applicant's work experience involved a substantially similar scope of practice to the practice in Iowa, which is to include:

(1) A written statement by the applicant detailing the scope of practice and stating how the work experience correlates to an applicable apprenticeship program approved by the United States Department of Labor; and

(2) Business or marketing materials detailing the services provided.

d. Proof that the other jurisdiction did not require a license to practice the profession, which may include:

(1) Copies of applicable laws;

(2) Materials from a website operated by a governmental entity in that jurisdiction; or

(3) Materials from a nationally recognized professional association applicable to the profession.

These rules are intended to implement Iowa Code chapters 103 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 503
“Electrician and Electrical Contractor Licensing Program—Complaints and Discipline”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103.6
State or federal law(s) implemented by the rulemaking: Iowa Code sections 103.33 through 103.39

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes promulgation of Chapter 503, “Electrician and Electrical Contractor Licensing Program—Complaints and Discipline.” The rulemaking implements Iowa Code sections 103.33 through 103.39 and 2023 Iowa Acts, Senate File 514, in accordance with the goals and directives of Executive Order 10 (Jan. 10, 2023). The rulemaking provides protection to Iowans because it defines disciplinary procedures when unlicensed individuals, electricians, and electrical contracting firms fail to comply with state law. The rulemaking provides information for the submission of complaints to the Electrical Examining Board, which is then able to investigate the allegation. The rulemaking also sets forth the licensing procedures upon a finding of noncompliance with professional standards set forth in applicable law, including describing the right to appeal. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

As this rulemaking relates to the receipt of complaints by the Board, disciplinary procedures, and appeal rights, licensees or unlicensed individuals who are the subject of discipline and the Board are the classes of persons that will bear the costs of the proposed rulemaking.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rulemaking is to properly set forth any procedures of the Board in accepting complaints and engaging in disciplinary proceedings against licensees and unlicensed individuals, including description procedures related to appeals of disciplinary action. The general

public and regulated industry benefit from clear descriptions of procedures related to these issues. There are approximately 18,670 individuals and businesses licensed pursuant to Iowa Code chapter 103 and the Board's rules. In 2022, the Board received 80 complaints and issued public discipline against two licensees.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Costs to the agency are primarily composed of the staff time needed to manage Board activities, which include managing complaints, conducting investigations when a licensee violates a practice standard, and enforcing discipline. An executive officer supports the full scope of work of this Board at approximately 0.08 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees relating to practice standards, continuing education, Board meeting administration, and more. The Board received approximately 80 complaints and issued discipline against two licensees in 2022. In light of the low number of complaints associated with this Board, costs specific to managing complaints and investigations are minimal. Notably, licensing fees cover the Board's administrative work related to complaints and discipline.

- Qualitative description of impact:

The proposed rules herein merely provide procedural clarity in light of Iowa Code sections 103.33 through 103.39. The potential cost of inaction would be decreasing the receipt of complaints or increasing confusion as to the discipline and appeal process.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency due to the administrative chapters implementing Iowa Code chapter 103 under current review (661—Chapters 500, 501, 502, 503, and 505) include the staff time needed to manage applications, submissions, and inquiries related to initial licenses, renewals, reinstatements, complaints/discipline, and continuing education. This includes approximately 4.0 FTE positions total at an annual cost of approximately \$388,300. The cost also includes expenses associated with licensing software and technology at an annual cost of approximately \$60,000.

Costs specific to this chapter include time needed to manage complaints received and to attend to discipline after an investigation has been conducted. An executive officer supports the full scope of work of this Board at approximately 0.08 FTE position. Notably, these costs are substantively attributable to Iowa Code sections 103.33 through 103.39 and are not specifically related to the procedures set forth in rule.

- Anticipated effect on state revenues:

None. Any revenues from disciplinary fees collected pursuant to the processes outlined in this proposed chapter are set forth in Iowa Code chapter 103 and are substantively attributable to Iowa Code sections 103.33 through 103.39, as opposed to these rules.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The rules proposed herein merely implement the disciplinary duties prescribed by Iowa Code chapter 103, providing clarification of complaint, disciplinary, and appeal processes and notice. Costs associated with implementing this chapter are minimal and are primarily incurred due to the Board's statutory duties, not the implementing rules. The benefits to the public and licensees as to the procedural clarity these rules provide appear to outweigh inaction.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less costly or less intrusive alternative. The rules proposed herewith implement the disciplinary and appeal procedures set forth in Iowa Code sections 103.33 through 103.39,

primarily providing the public and licensees with additional information regarding notice that will be afforded in the event the Board intends to discipline the licensee or unlicensed individual.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified alternative methods. The rules proposed herein implement the disciplinary and appeal procedures set forth in Iowa Code sections 103.33 through 103.39, primarily providing the public and licensees with additional information regarding notice that will be afforded in the event the Board intends to discipline the licensee or unlicensed individual.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The specific grounds for discipline required in this rulemaking related to electrical installations and licensing are required by Iowa Code sections 103.33 through 103.39.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

These rules do not appear to present any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 503 and adopt the following **new** chapter in lieu thereof:

CHAPTER 503 ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM— COMPLAINTS AND DISCIPLINE

661—503.1(103) Complaints. Any person may file a complaint regarding work performed by any licensee or licensee applicant, or by an unlicensed person who should possess a license issued by the board. Complaints can be filed either in writing or electronically.

661—503.2(103) Discipline. If a complaint alleging an act or acts in violation of Iowa Code chapter 103, rules adopted by the board, or any other provision of law deemed relevant by the board to the use of a license issued by the board is substantiated, the board may suspend the license for a specific period of time, or indefinitely, may revoke the license, or may reprimand the licensee. The holder of a license which is suspended or revoked will be notified of the suspension or revocation in writing by registered mail, return receipt requested, or by personal service. The notice will include a statement that the licensee has the right to appeal the reprimand, suspension or revocation to the board within 30 days of receiving the notice, and that the reprimand, revocation or suspension will not take effect until the time to file an appeal has expired. If an appeal is filed, the reprimand, suspension or revocation is stayed until the

appeal has been acted upon. The suspension of revocation becomes final 30 days after delivery of the notice if a timely request for an appeal is not received by the board.

EXCEPTION: If the board finds that a violation which is the basis of the suspension or revocation is such that allowing the licensee to continue to engage in work covered by the license would present an imminent threat to the safety of the public, the board may provide that the suspension or revocation take effect immediately upon notice being delivered to the licensee.

661—503.3(103) Action against an unlicensed person. If a person who is not licensed by the board has engaged in or is engaging in work requiring licensure by the board, the board may assess a civil penalty against the person, may seek an injunction to prevent the person from continuing to engage in such work, or both. A person who is accused of engaging in work where licensure is needed by law without having such a license will be notified of the specific allegations and intended remedial action by registered mail, return receipt requested, or by personal service. A person who is notified by the board of an intended remedial action under this rule may appeal the action as provided in rule 661—503.4(103). The intended remedial action becomes final 30 days after delivery of the notice if a timely request for an appeal is not received by the board.

661—503.4(103) Appeals. A licensee whose license is disciplined, an applicant whose application for a license is denied, or a person who is not licensed by the board and who is assessed a civil penalty for engaging in an activity requiring a license may appeal the suspension, revocation, denial, or civil penalty to the board by notifying the board office of the appeal in writing within 30 calendar days after receiving notice of the suspension, revocation, denial, or civil penalty. Upon receipt of a timely appeal, the board will conduct a contested case hearing under 481—Chapter 10.

These rules are intended to implement Iowa Code chapters 103, 252J, and 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 505
“Electrician and Electrical Contractor Licensing Program—Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103.6, 103.10, 103.12, 103.12A and 103.18

State or federal law(s) implemented by the rulemaking: Iowa Code sections 103.6, 103.10, 103.12, 103.12A and 103.18

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes promulgation of new Chapter 505, “Electrician and Electrical Contractor Licensing Program—Education.” It implements Iowa Code chapter 103 in accordance with the goals and directives of Executive Order 10 (Jan. 10, 2023). This rulemaking sets forth continuing education and program approval requirements for electricians and educational institutions. It includes an approval process for postsecondary electrical education programs; minimum requirements for contact hours, including lecture and laboratory hours; and minimum qualifications for instructors. It also includes the required number of hours of continuing education that licensees are required to obtain, a process for continuing education course approval, and requirements for continuing education course approvals. The intended benefit of continuing education is to ensure that electricians and educational institutions maintain up-to-date practice standards and, as a result, provide high-quality services to Iowa licensees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Electrical Examining Board is not privy to exact costs, but based on research estimates, the cost is around \$450 every three years for a licensee to meet these requirements. There are multiple entities that provide continuing education courses to licensees.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is ensuring that electricians and educational institutions maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting the public and property from hazards arising from the use of electricity.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry including educational institutions, professional associations, and businesses offers these courses, so the Board is not privy to exact costs, but based on research estimates, the cost is around \$450 every three years for a licensee to meet these requirements. There are multiple educational institutions that provide continuing education courses to licensees for free.

The Board does not have data to correlate increased public safety to continuing education hour requirements. Currently, Iowa requires 18 hours of continuing education for these licenses every three years (6 hours per year of licensure).

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date national electrical safety standards and potentially reduces the number of hazards arising from the use of electricity. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education. Notably, the Board does have a relatively low volume of complaints and disciplinary actions against licensees, which may beget the conclusion that current educational requirements are appropriate to achieve the intended goals.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency due to the administrative chapters implementing Iowa Code chapter 103 under current review (661—Chapters 500, 501, 502, 503, and 505) include the staff time needed to manage applications, submissions, and inquiries related to initial licenses, renewals, reinstatements, complaints/discipline, and continuing education. This specifically includes approximately 4.0 full-time equivalent (FTE) positions at an annual cost of approximately \$388,300. It also includes expenses associated with licensing software and technology at an annual cost of approximately \$60,000.

Costs specific to this chapter include time needed to manage and respond to inquiries regarding continuing education requirements and approvals. An executive officer supports the full scope of work of this Board at approximately 0.25 FTE position.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. This rulemaking has no anticipated impact on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours may reduce/eliminate the cost to the licensee to meet these requirements. However, the Board believes there could be an impact to public safety if continuing education requirements were reduced or eliminated. This could lead to more complaints, investigations, and discipline. Additionally, there could be a loss of revenue for the private industry organizations that offer these continuing education programs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

A less restrictive alternative would be to reduce the amount of continuing education required. A review of 17 states has shown that their continuing education programs' average requirement was 6.54

hours of continuing education per issued year. Currently, Iowa requires 18 hours of continuing education for these license types every three years (6 hours per year).

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with members of the Board inquiring whether the Board would recommend lowering the continuing education requirements. The Board has considered a change of the total number of and frequency of continuing education hours and the safety of the public. While the Board is not inclined at this time to make changes, it will continue to consider evidence-based practice and data for future review.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. However, the Board believes that eliminating continuing education requirements would increase the number of complaints, safety violations, and investigations that the Board would need to conduct. The Board has not been able to analyze this correlation, so it is unable to submit data in support of this belief. Notably, however, these continuing education requirements are slightly below 17 other states' averages and appear to be appropriate for this industry.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking attends to public safety concerns through educational requirements, and such continuing education is necessary whether the business is a small business or a large organization. While some electricians likely are running a small business of their own, some also work for large corporations. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business. If a small business licensee identified a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 505 and adopt the following **new** chapter in lieu thereof:

CHAPTER 505
ELECTRICIAN AND ELECTRICAL CONTRACTOR
LICENSING PROGRAM—EDUCATION

DIVISION I
POSTSECONDARY ELECTRICAL EDUCATION PROGRAMS

661—505.1 to 505.100 Reserved.

661—505.101(103) Program approval.

505.101(1) Pursuant to Iowa Code sections 103.12 and 103.12A, an educational institution that plans to offer a postsecondary electrical education program to prepare students to be licensed by the board needs to first obtain approval from the board for the program before students participate in the program. Separate approval is needed for a journeyman electrician program and for a residential electrician program.

505.101(2) The educational institution seeking approval is to apply to the board office on a form specified by the board. The application is to include a certification that the educational institution is currently accredited by a recognized regional or national educational accrediting organization.

505.101(3) Applications seeking initial approval of a journeyman electrician program or a residential electrician program are to be submitted to the board at least 60 days prior to student participation in the program.

505.101(4) The board may set times for periodic review of approved programs and can develop policies that address the following:

- a.* Requirements for the submission of applications.
- b.* Standards required for program approval.
- c.* Standards for withdrawal of approval or discontinuation of an approved program.
- d.* Standards for educational content and class attendance, qualifications for instructors, documentation and reporting needed to establish compliance with program requirements, and specification of degrees or diplomas awarded.

505.101(5) Information regarding approved postsecondary electrical education programs may be obtained by contacting the board office. A list of approved postsecondary electrical education programs and other information about postsecondary electrical education programs will be posted on the board's website.

661—505.102(103) Standards for postsecondary electrical education programs. The board will develop policies establishing the following minimum standards for an approved postsecondary electrical education program:

505.102(1) All necessary subject matter areas as published by the board and available on request from the board office and from the board website. Instruction is to include at least four hours of instruction on the Iowa electrical statute, Iowa Code chapter 103, with a minimum of one hour on Iowa electrical licensing requirements.

505.102(2) Minimum number of contact hours and necessary program attendance policies. Each approved program is to include 30 to 40 percent of contact hours that involve lecture, with all remaining hours consisting of laboratory or shop hours. A student cannot take the licensing examination until all contact hours and the specified number of hours of on-the-job training are completed.

a. A postsecondary electrical education program for a journeyman electrician license is to include at least 2,000 hours of instruction, with the student completing at least 6,000 hours of on-the-job training before the student will be eligible to take the journeyman electrician examination.

b. A postsecondary electrical education program for a residential electrician license is to include at least 1,000 hours of instruction, with the student completing at least 4,000 hours of on-the-job training before the student will be eligible to take the residential electrician examination.

505.102(3) Minimum qualifications for instructors which include:

- a.* Current licensing as an electrician, as set out in the board's policy; and
- b.* Compliance with standards set by the Iowa department of education for an instructor at a community college.

DIVISION II
CONTINUING EDUCATION

661—505.103 to 505.200 Reserved.

661—505.201(103) Continuing education requirements. Each holder of a three-year license is to complete 18 hours of continuing education approved by the board between the time of issuance of the license and prior to issuance of a renewal license.

EXCEPTION: A holder of a license in a category which may be issued for a three-year period whose license is issued for less than a three-year period only needs to complete 6 hours of continuing education prior to renewal of the license for each year or portion of a year for which the license has been issued.

661—505.202(103) Course approval.

505.202(1) Any person or institution that plans to offer continuing education courses to meet the requirements of rule 661—505.201(103) is to apply for approval to the board office on a form specified by the board.

505.202(2) Approval by the board should be obtained prior to a course's being offered to a licensee in order to meet the requirements of rule 661—505.201(103).

505.202(3) Applications for initial approval of a continuing education course are to be submitted to the board not less than 45 days prior to student participation in the course.

505.202(4) Approval of a continuing education course is normally for the duration of the three-year licensing period during which approval is received, although approval may be withdrawn for cause prior to the expiration of the licensing period.

505.202(5) Applications for renewal of approval of continuing education courses are to be submitted to the board at least 45 days prior to the expiration of the three-year licensing period. For purposes of this subrule, "renewal" may include the updating of course material in a course previously approved for delivery by the same instructor.

505.202(6) Information regarding approved continuing education courses may be obtained by contacting the board office. A list of approved continuing education courses will be posted on the board website.

661—505.203(103) Requirements for continuing education programs. A continuing education program can be approved by the board only if the following requirements are met:

505.203(1) The instructor or institution applying for approval of a continuing education course provides at least three letters from educational institutions or government agencies attesting to the instructor's knowledge of and qualifications to teach the subject matter of the course for which approval is sought.

505.203(2) Each instructor is responsible for:

- a. Obtaining and verifying course approval prior to delivery of the course.
- b. Facilitating auditing of the course by any board member or member of the staff of the board.

No board or staff member may receive continuing education credit for an audited course.

- c. Issuing a certificate of completion to each student who completes the course.
- d. Submitting a class roster, indicating which students completed the course, to the board office within 30 days of completion of the course.

These rules are intended to implement Iowa Code chapter 103.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 1
“Organization and Administration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 1 provides clarity to the organization and administration of the Real Estate Appraiser Examining Board. The chapter also establishes Iowa’s compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the requirements of the Appraisal Qualification Board (AQB), and the Appraisal Foundation’s (TAF) Criteria. This chapter also includes pertinent information related to the types of appraiser licenses issued in the state of Iowa and the process to obtain licensure.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Chapter 1 provides organizational and administrative background for the Real Estate Appraiser Examining Board. No costs are imposed by this chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
The classes of persons that will benefit from the proposed rulemaking are licensees and the general public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
No economic impact is imposed by Chapter 1.
 - Qualitative description of impact:

Iowans are protected by the laws of professional licensing through responsible regulations. The Board ensures minimum standards for licensing and resolves complaints against licensees.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency includes the staff time needed to manage Board activities, which include managing all chapters of the Board's rules. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

The revisions to Chapter 1 have no anticipated effect on state revenues. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed in Chapter 1. The benefit of less restrictive language and consolidation of chapters is to simplify rules and provide better understanding to the public, licensees, and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Due to state government alignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revisions to these rules support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative method was considered by the Board because the regulations are set by TAF in accordance with federal law.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Licensing and regulation of this profession is required by Iowa Code. The Real Estate Appraiser Examining Board is established in statute.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Iowa licenses real estate appraisers, some of whom may own small businesses. There is no compliance requirement in Chapter 1. The function is solely to inform.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
ORGANIZATION AND ADMINISTRATION

193F—1.1(543D) Description.

1.1(1) The purpose of the real estate appraiser examining board is to administer and enforce the provisions of Iowa Code chapter 543D with regard to the appraisal of real property in the state of Iowa, examination of candidates, issuance of licenses, investigation of alleged violations by licensees, and discipline of those regulated by the board. Through its actions, the board seeks to promote and maintain a high level of public trust in professional appraisal practice.

1.1(2) The board maintains an office at 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309.

1.1(3) All board action under Iowa Code chapter 543D and 193F—Chapter 17 will be taken under the supervision of the director, as provided in Iowa Code section 543D.23 and these implementing rules.

193F—1.2(543D) Administrative authority.

1.2(1) The director is vested with authority to review, approve, modify, or reject all board action pursuant to Iowa Code chapter 543D and 193F—Chapter 17. The director may exercise all authority conferred upon the board and has to have access to all records and information to which the board has access. In supervising the board, the director will independently evaluate the substantive merits of recommended or proposed board actions which may be anticompetitive.

1.2(2) In performing its duties and in exercising its authority under Iowa Code chapter 543D and 193F—Chapter 17, the board may take action without preclearance by the director if the action is ministerial or nondiscretionary. As used in this chapter, the words “ministerial or nondiscretionary” include any action expressly mandated by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee. The board may, for example, grant or deny an application for initial or reciprocal certification as a real estate appraiser, an application for registration as an associate real estate appraiser, or an application for a temporary practice permit by an out-of-state appraiser, on any ground expressly mandated by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee.

1.2(3) Prior to taking discretionary action under Iowa Code chapter 543D and 193F—Chapter 17, the board will secure approval of the director if the proposed action is or may be anticompetitive, as provided in 193F—Chapter 17. As used in this chapter, the word “discretionary” includes any action that is authorized but not expressly imposed by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee. Examples of discretionary action include orders in response to petitions for rulemaking, declaratory orders, or waivers from rules, rulemaking, disciplinary proceedings against licensees, administrative proceedings against unlicensed persons, or any action commenced in the district court.

1.2(4) Determining whether any particular action is or may be anticompetitive is necessarily a fact-based inquiry dependent on a number of factors, including potential impact on the market or restraint of trade. With respect to disciplinary actions, for instance, a proceeding against a single licensee for violating appraisal standards would not have an impact on the broader market and would accordingly not be an anticompetitive action. Commencement of disciplinary proceedings which affect all or a substantial subset of appraisers may have a significant market impact. When in doubt as to whether a proposed discretionary action is or may be anticompetitive, the board may submit the proposed action through the preclearance procedures outlined in 193F—Chapter 17.

1.2(5) A person aggrieved by any final action of the board taken under Iowa Code chapter 543D or 193F—Chapter 17 may appeal that action to the director within 20 days of the date the board issues the action.

a. The appeal process applies whether the board action at issue was ministerial or nondiscretionary, or discretionary, and whether the proposed action was or was not submitted through a preclearance process before the director.

b. No person aggrieved by a final action of the board may seek judicial review of that action without first appealing the action to the director, as more fully described in 193F—Chapter 17.

c. Records, filings, and requests for public information. Final board action, regardless of whether such board action is ministerial, nondiscretionary, or discretionary, will be immediately effective when issued by the board but is subject to review or appeal to the director as permitted by and in accordance with 193F—Chapter 17. If a timely review is initiated or a timely appeal is taken, the effectiveness of such final board action will be delayed during the pendency of such review or appeal.

193F—1.3(543D) Annual meeting. The annual meeting of the board will be the first meeting scheduled after April 30. At this time, the chairperson and vice chairperson are elected to serve until their successors are elected.

193F—1.4(543D) Other meetings. In addition to the annual meeting, and in addition to other meetings, the time and place of which may be fixed by resolution of the board, any meeting may be called by the chairperson of the board or by joint call of a majority of its members.

193F—1.5(543D) Executive officer’s duties.

1.5(1) The executive officer is to cause complete records to be kept of applications for examination and registration, certificates and permits granted, and all necessary information in regard thereto.

1.5(2) The executive officer is to determine when the legal obligations for certification and registration have been satisfied with regard to issuance of certificates or registrations, and the executive officer will submit to the board any questionable application.

1.5(3) The executive officer will keep accurate minutes of the meetings of the board. The executive officer will keep a list of the names of persons issued certificates as certified general real property appraisers, certified residential real property appraisers and associate real property appraisers.

193F—1.6(543D) Records, filings, and requests for public information. Unless otherwise specified by the rules of the department of inspections, appeals, and licensing, the board is the principal custodian of its own agency orders, statements of law or policy issued by the board, legal documents, and other public documents on file with the board.

1.6(1) Any person may examine public records promulgated or maintained by the board at its office during regular business hours.

1.6(2) Deadlines. Unless the context dictates otherwise, such as is the case for timely renewal of a registration or certificate, any deadline for filing a document will be extended to the next working day when the deadline falls on a Saturday, Sunday, or official state holiday.

193F—1.7(543D) Adoption, amendment or repeal of administrative rules.

1.7(1) The board is authorized to adopt, amend or repeal its administrative rules in accordance with the provisions of Iowa Code section 17A.4. Prior to the adoption, amendment or repeal of any rule of the board, any interested person, as described in Iowa Code section 17A.4(1) “*b*,” may submit any data, views, or arguments in writing concerning such rule or may request to make an oral presentation concerning such rule. Such written comments or requests to make oral presentations are to be filed with the board at its official address and should clearly state:

a. The name, address, and telephone number of the person or agency authoring the comment or request;

b. The number and title of the proposed rule, which is the subject of the comment or request as given in the Notice of Intended Action;

c. The general content of the oral presentation. A separate comment or request to make an oral presentation will be made for each proposed rule to which remarks are to be asserted.

1.7(2) The board will acknowledge receipt and acceptance for consideration of written comments and requests to make oral presentations.

1.7(3) Written comments received after the deadline set forth in the Notice of Intended Action may be accepted by the board although their consideration is not assured. Requests to make an oral presentation received after the deadline will not be accepted and will be returned to the requester.

193F—1.8(543D) Types of appraiser classifications. There are four types of appraiser classifications:

1. Associate residential real property appraiser. This classification consists of those persons who meet the obligations of 193F—Chapter 4.

2. Associate general property appraiser. This classification consists of those persons who meet the obligations of 193F—Chapter 4.

3. Certified residential real property appraiser. This classification consists of those persons who meet the obligations of 193F—Chapter 6.

4. Certified general real property appraiser. This classification consists of those persons who meet the obligations of 193F—Chapter 6.

193F—1.9(543D) Qualified state appraiser certifying agency.

1.9(1) The real estate appraiser examining board is a state appraiser certifying agency in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). As a result, persons who are issued certificates by the board to practice as certified real estate appraisers are authorized under federal law to perform appraisal services for federally related transactions and are identified as such in the National Registry maintained by the Appraisal Subcommittee (ASC).

1.9(2) The board will adhere to the criteria established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation when registering associate appraisers or certifying certified appraisers under Iowa Code chapter 543D. To the extent that the rules conflict with the minimum obligations outlined in the current version of the AQB criteria, the minimum standards established in the criteria will apply and these rules will give way to the minimum obligations to comply with federal rule, law, or policy.

193F—1.10(543D) AQB criteria.

1.10(1) No person may be certified as a certified appraiser unless the person is eligible under the January 1, 2022, AQB criteria.

1.10(2) The January 1, 2022, AQB criteria outline the conditions under which applicants for certification are eligible to take the mandated examinations.

These rules are intended to implement Iowa Code sections 543D.4, 543D.5, 543D.7, 543D.17, 543D.20 and 543D.22 and chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 2
“Definitions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 2 establishes the definitions of acronyms and terms used in the licensing and regulation of the Real Estate Appraiser Examining Board. This aids licensees and the general public in understanding terms used throughout the Board’s rules.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Chapter 2 provides definitions used for the Real Estate Appraiser Examining Board and regulating the profession. No costs are imposed by this chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
The classes of persons that will benefit from the proposed rulemaking are licensees and the general public. The chapter creates a shared understanding of terminology regulating the profession.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known or anticipated economic impact from Chapter 2.
 - Qualitative description of impact:
This chapter makes professional licensing easier to understand and navigate. Revisions to the repromulgated rules support the effort to streamline the chapter and make things easier to understand.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency includes the staff time needed to manage Board activities, which includes managing all chapters of the Board's rules. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

This chapter has no anticipated impact on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed in Chapter 2. The benefit of less restrictive language and consolidation of chapters proposed in the repromulgated rules is that the chapter is simplified for better understanding for the public and licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board is taking the less intrusive route by removing the duplicative language in Chapter 2.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

As mentioned above, there is little or no cost implication. The Board is taking the less intrusive route by removing the duplicative language in Chapter 2.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The recommended repromulgated rules are reflective of revisions consistent with the intent to ease burden and make it easier for licensees to understand the chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The revisions to Chapter 2 have little to no impact on small business because Chapter 2 contains only definitions and no penalties or fees.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2 DEFINITIONS

193F—2.1(543D) Applicability. The following definitions apply to the rules of the real estate appraiser examining board.

“*Appraisal Foundation*” means the same as defined in Iowa Code section 543D.2(3).

“*Appraisal subcommittee*” means the appraisal subcommittee of the Federal Financial Institutions Examination Council.

“*AQB*” means the Appraiser Qualifications Board of the Appraisal Foundation.

“*AQB Criteria*” or “*the Criteria*” means the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria, effective as of January 1, 2022.

“*ASB*” means the Appraisal Standards Board of the Appraisal Foundation.

“*Associate real property appraiser*” means the same as defined in Iowa Code section 543D.2(6).

“*Certified appraiser*” means an individual who has been certified in one of the following two classifications:

1. The certified residential real property appraiser classification is qualified to appraise one to four residential units without regard to value or complexity.

2. The certified general real property appraiser classification is qualified to appraise all types of real property.

“*Director*” means the same as defined in Iowa Code section 543D.2(9)“*a.*”

“*FFIEC*” means the Federal Financial Institutions Examination Council.

“*FIRREA*” means the Financial Institutions Reform Recovery and Enforcement Act of 1989.

“*USPAP*” means the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation, effective as of January 1, 2024.

This rule is intended to implement Iowa Code section 543D.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 3
“General Provisions for Examinations”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

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Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 3 establishes the provisions for those seeking to sit for the Real Estate Appraiser Examination in Iowa. The chapter guides individuals sitting for the certified exam in the state of Iowa as required by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation (TAF).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant to comply with the requirements set by the AQB. The application fees for the exam and experience application are \$150 and \$145, respectively, to be paid to the state-approved examination testing center.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rules. Establishing minimum examination requirements ensures that licensees are competent to practice. Individuals that wish to engage in federally regulated transaction appraisals must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Approved examination applicants are required to comply with the AQB. Those approved to sit for the required examination need to have completed the work product review (WPR) process. Those requirements are located in 193F—Chapter 6.

The fees associated with being able to sit for the examination consist of the completion of qualifying education prior to licensure in the state of Iowa. Those applying for licensure will complete the qualifying education (QE) requirement set by the AQB. The estimated average costs of the QE requirement are \$3,835 (general) to \$5,360 (residential). The WPR fee is set at \$300 for residential and \$650 for general. The State does incur a cost that is noted in Section 3 of this analysis. Due to the variation of education requirements, the Board is unable to supply an estimation of the education.

- Qualitative description of impact:

Establishing minimum requirements for examination and licensure aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes managing applications for examination. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards. In addition, residential applicants pay \$300 of the \$1,275 peer review fee and general applicants pay \$650 of the \$2,225 peer review fee.

- Anticipated effect on state revenues:

The effect will stay the same, and no changes are foreseen.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa currently follows the minimum standards for examination set by FIRREA.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa currently follows the minimum standards for examination set by TAF in accordance with federal law. TAF sets the congressionally authorized standards and qualifications for this profession.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No other alternate method was considered by the Board because the regulations are set by TAF in accordance with federal law. The Board considered merging this chapter into the certified real estate appraiser licensing chapter, but felt this could cause confusion.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost effective alternative to the examination that still complies with federal law. The Board believes all current requirements assure public safety and ensure minimum competency of care is provided to Iowans. In addition, the Board follows the minimum standards set by the AQB criteria in accordance with federal law.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking is meant to ensure public safety in terms of examinations for appraisers. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses and would not be in compliance with federal law. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 3 and adopt the following new chapter in lieu thereof:

CHAPTER 3
GENERAL PROVISIONS FOR EXAMINATIONS

193F—3.1(543D) Examinations. Applicants for a license from the board need to take the examination from the board-approved testing service.

193F—3.2(543D) Conduct of applicant.

3.2(1) Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of certification in Iowa, be barred from the appraisal certification examinations in Iowa, or be subject to the imposition of other sanctions that the board deems appropriate.

3.2(2) Conduct that subverts or attempts to subvert the examination process includes, but is not limited to:

a. Conduct that violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion of the examination; aiding by any means in the reproduction or reconstruction of any portion of the examination; selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered examination.

b. Conduct that violates the standard of test administration, such as communicating with any other examination candidate during the administration of the examination; copying answers from another candidate or permitting one's answers to be copied by another candidate during the examination; referencing any books, notes, written or printed materials or data of any kind, other than the examination materials distributed.

c. Conduct that violates the examination process, such as falsifying or misrepresenting educational credentials or other information needed for admission to the examination; impersonating an examination candidate or having an impersonator take the examination on one's behalf.

3.2(3) Any examination candidate who challenges a decision of the board under this rule may request a contested case hearing. The request for hearing will be in writing, will briefly describe the basis for the challenge, and will be filed in the board's office within 30 days of the date of the board decision that is being challenged.

193F—3.3(543D) Application for certification or registration. Applicants for certification or registration have to successfully complete the appropriate examination.

3.3(1) All initial applications for certification or associate registration will be made through the board's online system. The board may deny an application as described in Iowa Code sections 543D.12

and 543D.17. The board may also deny an application based on disciplinary action pending or taken against an applicant consistent with Iowa Code section 272C.12.

3.3(2) Reserved.

These rules are intended to implement Iowa Code section 543D.8.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 4
“Associate Real Estate Appraiser”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

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Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 4 establishes the pathway for those seeking an associate real estate appraiser license in Iowa. This gives individuals an avenue to provide services to Iowans if the individuals either convert to a certified real estate appraiser or provide services with the assistance of a supervisor. The chapter guides individuals as required by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation (TAF).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant to comply with the requirement set by the AQB in accordance with federal law. The fee for an initial associate real estate appraiser is \$200. Educational costs vary depending on the provider or institution used. The required qualifying education for an associate has an estimated cost of \$1,210 for those using the supervisory pathway. This does not include the education requirements. Fees for initial licensure vary greatly in surrounding states.

| | Iowa | South Dakota | Minnesota | Illinois | Missouri | Nebraska | Kansas |
|-------------------------------------|-------|-----------------|-----------|----------|----------|----------|--------|
| Associate Appraiser — Initial | \$200 | \$420 | \$180 | \$225 | \$300 | \$600 | \$450 |
| Associate Appraiser — Renewal | \$200 | \$350 | \$130 | \$300 | \$300 | \$550 | \$400 |

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum requirements ensures that licensees are competent to practice. Individuals who wish to engage in federally regulated transactions appraisals must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Establishing minimum requirements for licensure aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

- Qualitative description of impact:

Establishing minimum requirements for licensure and permits aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes managing applications for initial licenses, temporary practice permits, renewals, and reinstatements. Federal requirements that require temporary practice permits to be completed within five days of receipt, and verifications of licensure that holds the same federal requirement for completion, are demanding on resources. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

The effect will stay the same, and no changes are foreseen. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa currently follows a majority of the minimum standards for associate licensure set by FIRREA.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa currently follows a majority of the minimum standards for associate licensure set by TAF. TAF sets the congressionally authorized standards and qualifications for this profession. The Board's goal is to follow the minimum standards to allow for easier licensure in the state of Iowa, with the exception of the licensed residential appraiser status that Iowa does not offer, which would require a statute change.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Alternate methods were considered by the agency. The Board received a report from TAF's Appraisal Subcommittee (ASC) regarding decreasing barriers to entry into the appraisal profession and has made changes to comply with the minimum standards for those licensure types for the state licenses. This change will require a change to Iowa Code chapter 543D. Additionally, the Board considered merging this chapter into the certified appraiser licensing chapter but felt this could cause confusion.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost effective alternative to the associate real estate appraiser licensing. The Board believes all current requirements assure public safety and ensure minimum competency of care is provided to Iowans. In addition, the Board is seeking to follow the minimum standards set by the AQB criteria after a slight change to Iowa Code chapter 543D.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing requirements for appraisers. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Additionally, federal law governing the regulation of this profession does not make exemptions for licensees in this profession working in small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4 ASSOCIATE REAL ESTATE APPRAISER

193F—4.1(543D) Qualifications to register as an associate appraiser.

4.1(1) Education. A person applying for registration as an associate appraiser will, at a minimum, satisfactorily complete all AQB-approved, qualifying education courses needed under the AQB criteria specifying educational standards applicable for registration as an associate appraiser.

4.1(2) Background check. A state and national criminal history check will be performed on any new associate appraiser applicant. The applicant will authorize release of the results of the criminal history check to the board. If the criminal history check was not completed within 180 calendar days prior to the date the license application is received by the board, the board may perform a new state and national criminal history check or may reject and return the application to the applicant.

4.1(3) Application process. After completing the AQB associate appraiser obligations, a person applying as an associate appraiser can then access the application through the board's online system. A sufficient application within the meaning of Iowa Code section 17A.18(2) will include all information as outlined in the board's online system and be accompanied by the applicable fee.

4.1(4) Registration denial. The board may deny an application for registration as an associate appraiser on any ground identified in 193F—subrule 3.4(1) or on any ground upon which the board may impose discipline against an associate appraiser, as provided in 193F—Chapter 7.

193F—4.2(543D) Supervision of associate appraisers.

4.2(1) Direct supervision. An associate appraiser is subject to the direct supervision obligations set by the AQB criteria.

4.2(2) Supervisor registration. An associate appraiser, other than a PAREA associate, will identify all supervisors by whom the associate will be supervised through the board's online system and will promptly notify the board in the event of any change in supervisors. An associate appraiser, other than a PAREA associate, who does not have at least one approved active supervisor meeting the supervision obligations will be placed in inactive status until such time as the associate finds a supervisor. Associate appraisers wishing to maintain an inactive license have to continue to renew on a biennial basis in accordance with rule 193F—4.3(543D).

4.2(3) Scope of practice. The scope of practice for an associate appraiser is set by the AQB criteria.

4.2(4) Logs. An associate appraiser will maintain an appraisal experience log consistent with the AQB criteria.

193F—4.3(543D) Renewal of associate appraiser registration. An associate appraiser registration has to be renewed on a biennial basis as more fully described in 193F—Chapter 9. An associate appraiser is subject to the same continuing education obligations applicable to a certified appraiser as a precondition for renewal. Continuing education obligations are outlined in 193F—Chapter 11.

193F—4.4(543D) Progress toward certification as a certified residential appraiser or certified general appraiser.

4.4(1) Associate classification. The associate appraiser classification is intended for those persons training to become certified appraisers and is not intended as a long-term method of performing appraisal services under the supervision of a certified appraiser in the absence of progress toward certification. As a result, the board may impose deadlines for achieving certification, or for satisfying certain prerequisites toward certification.

4.4(2) Progress reports. In order to assess an associate appraiser's progress toward certification, the board may request periodic progress reports from the associate appraiser and from the associate appraiser's supervisory appraiser or appraisers.

193F—4.5(543D) Applying for certification as a certified residential appraiser or certified general appraiser. An associate appraiser may apply for certification as a certified residential real estate appraiser or as a certified general real estate appraiser as set by the AQB criteria and consistent with Iowa Code chapter 543D and the rules of the board.

193F—4.6(272C,543D) Reinstating or reactivating an associate registration.

4.6(1) In order to reinstate or reactivate an associate registration that has lapsed or been placed in inactive or retired status, the applicant has to complete all continuing education obligations for reinstatement as required by board rule and the AQB criteria. Any qualifying education course taken under this rule as continuing education will also apply as qualifying education toward certification. If the applicant has completed all qualifying education prior to applying to reinstate a lapsed, retired, or inactive associate registration, the applicant may use any approved continuing education course as required by board rule and the AQB criteria.

4.6(2) If an appraiser's registration is placed in inactive status as a result of the appraiser's failure to maintain at least one approved active supervisor meeting the obligations of 193F—Chapter 15 pursuant

to subrule 4.2(2), the applicant will complete the continuing education in accordance with subrule 4.6(1) in order to reinstate the associate registration but is not obligated to pay any reinstatement fee otherwise due so long as the associate has not renewed the registration to inactive status or allowed the registration to lapse prior to reinstating or reactivating the registration.

193F—4.7(543D) Supervisory appraiser requirements. Iowa follows the AQB criteria and USPAP concerning supervisory appraiser requirements.

These rules are intended to implement Iowa Code chapters 543D and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 6
“Certified Real Estate Appraiser”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 6 establishes the pathway for those seeking a certified real estate appraiser license in Iowa. This allows individuals an avenue to provide services to Iowans. The chapter guides individuals as required by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation (TAF).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the general public, but there is a cost to the applicant to comply with the minimum requirements to enter into the profession. The fee for initial certified real estate license is \$280 and the renewal fee is \$280, with \$80 of the license fee forwarded to TAF’s Appraisal Subcommittee (ASC) National Registry. Work Product Review (WPR) costs depend on the licensure type at \$300 for a residential appraiser applicant and \$650 for a general appraiser applicant. The residential pathway Qualifying Education (QE) has an estimated cost of \$3,920, of which \$1,125 was previously paid for the associate license. General appraisers’ QE has an approximate cost of \$5,445, of which \$1,125 was paid for the associate license. Depending on the time between licensure as an associate and the conversion to a certified appraiser, the applicant may incur a background check fee of \$51. Regardless of the type of certification, an applicant will incur an examination application fee of \$150 and a \$145 fee that is payable to certified testing center. Due to the various education options available to licensees, the Board is unable to provide a cost estimate for the education. Licensure and renewal costs vary greatly for surrounding states’ initial and renewal licensing fees for certified real estate appraisers. Iowa’s licensing fees are cheaper than most neighboring states, making it more affordable to be a real estate appraiser in Iowa.

| | Iowa | South Dakota | Minnesota | Illinois | Missouri | Nebraska | Kansas |
|--|-------|-----------------|-----------|----------|----------|----------|--------|
| Certified General License — Initial | \$280 | \$880 | \$260 | \$315 | \$300 | \$680 | \$530 |
| Certified Residential — Initial | \$280 | \$830 | \$260 | \$315 | \$300 | \$680 | \$530 |
| Certified General — Renewal | \$280 | \$780 | \$210 | \$530 | \$300 | \$630 | \$480 |
| Certified Residential — Renewal | \$280 | \$750 | \$210 | \$530 | \$300 | \$630 | \$480 |

Chart reflects a two-year renewal cycle fee for each state.

Some states did not indicate the National Registry fee of \$40 per year.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that licensees are competent to practice. Individuals that wish to engage in federally regulated transactions must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Establishing minimum requirements for licensure aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

- Qualitative description of impact:

Establishing minimum requirements for licensure aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which include managing applications for initial licenses, temporary practice permits, renewals and reinstatements. WPR fees paid to peer reviewers exceed the amount collected by the applicant; a certified residential appraiser applicant pays \$300 of the \$1,275 fee, and a certified general appraiser applicant pays \$650 of the \$2,225 fee. Federal requirements mandate verification of licensees are completed within five days of receipt.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

The effect will stay the same, no changes foreseen. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa currently follows a majority of the minimum standards for associate licensure set by FIRREA.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa currently follows a majority of the minimum standards for associate licensure set by TAF. TAF sets the congressionally authorized standards and qualifications for this profession. The Board's goal is to follow the minimum standards to allow for easier licensure in the state of Iowa, with the exception of the licensed residential appraiser status that Iowa does not offer, which would require a statutory change.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Alternate methods were not considered by the agency since the regulations are set by TAF in accordance with federal law. The Board received a report from the ASC regarding decreasing barriers to entry into the appraisal profession and has made changes to comply with the minimum standards for those licensure types for the state licenses. This change would require a change to Iowa Code chapter 543D. The Board merged Chapters 5 and 6, resulting in less confusion for licensees and the general public.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost effective alternative to the certified real estate appraiser licensing. The Board believes all current requirements assure public safety and ensure minimum competency of care is provided to Iowans. In addition, the Board is seeking to follow the minimum standards set by the AQB criteria after a slight change to Iowa Code chapter 543D.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing requirements for appraisers. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 6 and adopt the following new chapter in lieu thereof:

CHAPTER 6 CERTIFIED REAL ESTATE APPRAISER

193F—6.1(543D) General.

6.1(1) Iowa Code chapter 543D regulates appraisal services performed in this state when appraiser certification is needed under federal law. Iowa recognizes two types of certification: certified residential real estate appraiser and certified general real estate appraiser. Iowa does not provide licenses for the “licensed real estate appraiser” category recognized under federal law. More information can be found in 12 CFR section 34.43. Therefore, appraisal services involving federally related transactions in the state have to be performed by an Iowa certified real estate appraiser with the appropriate certification for the property at issue, or by a person holding an appropriate license or certification from a foreign jurisdiction who also has been issued a temporary practice permit under Iowa Code section 543D.11(2).

6.1(2) The chart below outlines the differences between two certifications issued by the board.

| | Certified Residential Real Estate Appraiser | Certified General Real Estate Appraiser |
|--------------------------------------|--|---|
| Property type that can be appraised | Residential units ranging from one to four tenants | All real estate, including commercial and agricultural |
| Qualifying education core curriculum | 200 hours | 300 hours |
| Qualifying education | Bachelor's degree or higher from an accredited college, junior college, community college, or university; or, an associates degree in specific fields, 30 semester hours of college-level course working in specific areas, 30 semester hours of CLEP examinations, or any combination CLEP/college-level covering appropriate hours and topics. | Bachelor's degree or higher from an accredited college, junior college, community college, or university. |
| Experience | 1,500 hours accumulated in no less than 12 months. | 3,000 hours with a minimum of 1,500 hours general accumulated in no less than 18 months. |
| Examination | Certified residential real property appraiser examination or the certified general real property appraiser examination | Certified general real property appraiser examination. |

6.1(3) All appraisers performing services regulated by the board are obligated to comply with USPAP.

193F—6.2(543D) Education. Applicants for certification by the board have to meet the educational obligations of the AQB criteria.

193F—6.3(543D) Examination. The prerequisites for taking the AQB-approved examination are collegiate education, experience, work product review, and completion of all creditable course hours as specified in this chapter. The core criteria hours, collegiate education, and all experience have to be completed as specified in this chapter. Equivalency will be determined in accordance with the AQB. USPAP qualifying education will be awarded only when the class is instructed by at least one AQB-certified USPAP instructor who holds a state-issued certified appraiser credential in active status and good standing.

6.3(1) In order to qualify to sit for the appropriate certified real estate appraiser examination, the applicant has to complete the board’s application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination.

a. A sufficient application within the meaning of Iowa Code section 17A.18(2) has to:

- (1) Be through the board’s online system;
- (2) Be signed by the applicant, be certified as accurate, or display an electronic signature by the applicant if submitted electronically;
- (3) Be fully completed;

- (4) Reflect, on its face, full compliance with all applicable continuing education obligations; and
- (5) Be accompanied by the fee specified in 193F—Chapter 12.

b. The core criteria, collegiate education, experience, and work product review have to be completed and documentation submitted to the board at the time of application to sit for the examination.

6.3(2) The board may verify educational credits claimed. Undocumented credits will be sufficient cause to invalidate the examination results.

6.3(3) Responsibility for documenting the educational credits claimed rests with the applicant.

6.3(4) An applicant has to supply a true and accurate copy of the original examination scores when applying for certification.

6.3(5) If an applicant who has passed an examination does not obtain the related appraiser credential within 24 months after passing the examination, that examination result loses its validity to support issuance of an appraiser credential. To regain eligibility for the credential, the applicant has to retake and pass the examination. This obligation applies to individuals obtaining an initial certified credential or upgrading from an associate credential.

193F—6.4(543D) Supervised experience needed for initial certification. Except as otherwise permitted herein, all experience needed to obtain certification has to be obtained consistent with Iowa Code section 543D.9.

6.4(1) *Acceptable experience.* The board will accept as qualifying experience the documented experience attained while the applicant for initial certification was in an educational program recognized by the Appraiser Qualifications Board and Appraisal Subcommittee as providing qualifying experience for certification, whether or not the applicant was registered as an associate real estate appraiser at the time the educational program was completed. Such programs approved by federal authorities (e.g., PAREA) will incorporate direct supervision by a certified real estate appraiser and such additional program features as to satisfy the purpose of requiring that qualifying experience be attained by the applicant as a real estate appraiser.

6.4(2) *Exceptions.* Applicants for certified real estate appraiser certification in Iowa may utilize experience obtained in the absence of registration as an associate real estate appraiser under the following circumstances.

a. Subject to any obligations or limitations established by applicable federal authorities, including the AQB and ASC, or applicable federal law, rule, or policy, hours qualifying for experience in any jurisdiction will be considered qualifying hours for experience in Iowa without board approval or authorization, as long as the applicant is able to establish by clear and convincing evidence all of the following:

(1) The qualifying hours obtained were completed in another jurisdiction under the direct supervision of an appropriate active certified real estate appraiser in that jurisdiction in accordance with the AQB and the jurisdiction's laws, rules, or policies.

(2) The nature of the experience attained in another jurisdiction is qualitatively and substantially equivalent to the experience an associate real estate appraiser would receive under the direct supervision of a certified real estate appraiser in this state.

b. Reserved.

193F—6.5(543D) Demonstration of experience. The board applies the dictates of Iowa Code section 543D.9 and the AQB criteria in determining whether the experience necessary for certification has been met.

6.5(1) An applicant is obligated to appear before the board to supplement or verify evidence of experience.

6.5(2) The board may inspect documentation relating to an applicant's claimed experience.

193F—6.6(543D) Work product review.

6.6(1) An applicant will submit a complete appraisal log at the time of application for examination and experience consistent with the AQB criteria. Three appraisal reports will be selected by the board

from the log. The applicant will submit electronically one copy of each report and work file for each of the selected appraisals along with the appropriate fee. The work product submission will not be redacted by the applicant. The board reserves the right to request additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or the degree to which the submitted appraisals are representative of the applicant's work product.

6.6(2) The board will treat all appraisals received as confidential pursuant to USPAP. While applicants are encouraged to submit appraisals actually performed for clients, applicants may submit demonstration appraisals if based on factual information and clearly marked as demonstration appraisals.

6.6(3) An applicant seeking original certification as a certified general real estate appraiser will submit one residential appraisal and two nonresidential appraisals for review. An applicant seeking an upgrade certification to a certified general real estate appraiser will submit two nonresidential appraisals for review.

6.6(4) The board will submit the appraisals to a peer review consultant for an opinion on the appraiser's compliance with applicable appraisal standards.

6.6(5) The work product review process is not intended as an endorsement of an applicant's work product. No applicant or appraiser will represent the results of work product review in communications with a client or in marketing to potential clients in a manner that falsely portrays the board's work product review as an endorsement of the appraiser or the appraiser's work product. Failure to comply may be grounds for discipline.

6.6(6) The board views work product review, in part, as an educational process. While the board may deny an application based on an applicant's failure to adhere to appraisal standards or otherwise demonstrate a level of competency upon which the public interest can be protected, the board will attempt to work with applicants deemed in need of assistance to arrive at a mutually agreeable remedial plan. A remedial plan may include additional education, desk review, a mentoring program, or additional precertification experience.

6.6(7) An applicant who is denied certification based on the work product review described in this rule, or on any other ground, will be entitled to a contested case hearing. Notice of denial will specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

6.6(8) If probable cause exists, the board may open a disciplinary investigation based on the work product review of an applicant. A potential disciplinary action could arise, for example, if the applicant is a certified residential real estate appraiser seeking an upgrade to a certified general real estate appraiser, or where the applicant is uncertified and is working under the supervision of a certified real estate appraiser who cosigned the appraisal report.

6.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. Work product submitted for educational purposes only will not result in disciplinary action on either the associate appraiser or the associate appraiser's supervisor so long as the appraisal review did not reveal negligent or egregious errors or omissions. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

6.6(10) The board will retain the appraisals for as long as needed as documentation of the board's actions for the Appraisal Subcommittee or as needed in a pending proceeding involving the work product of the applicant or the applicant's supervisor. When no longer needed for such purposes, the work product may be retained or destroyed at the board's discretion.

193F—6.7(543D) Practical Applications of Real Estate Appraisal (PAREA). PAREA utilizes simulated experience training and serves as an alternative to the traditional supervisor/trainee experience model. PAREA programs have to be AQB-approved and meet all the applicable AQB criteria. An applicant who meets the prerequisites of a PAREA program prior to commencement of training and who receives a valid certificate of completion from an AQB-approved PAREA program, has met the allotted

experience obligations as outlined in the AQB criteria for that specific PAREA program. PAREA program experience allotment will be awarded per the AQB criteria at the time of program completion.

Applicants claiming PAREA experience credit are not allowed partial credit for PAREA training (rules 193F—6.1(543D) through 193F—6.7(543D)).

193F—6.8(543D) Upgrade from a certified residential real estate appraiser to a certified general real estate appraiser. To upgrade from a certified residential real estate appraiser to a certified general real estate appraiser, an applicant has to satisfy all obligations of this rule, which include work product review and a state and national criminal history check as provided in Iowa Code section 543D.22.

6.8(1) Education.

a. Collegiate education. Certified residential real estate appraisers have to satisfy the college-level education obligations of the AQB.

b. Core criteria. In addition to the formal education and core criteria educational obligations originally needed to obtain a certified residential credential, an applicant has to meet the current AQB obligations before taking the AQB-approved examination.

6.8(2) Examination. An applicant has to satisfy the examination obligations.

6.8(3) Supervision and experience.

a. Experience. An applicant has to satisfy all of the experience obligations while in active status and in accordance with AQB criteria.

b. Supervision. Subject to applicable exceptions, all nonresidential experience obtained and applied toward obtaining a certified general credential as part of the upgrade process will be performed under the tutelage of a certified general real property appraiser, subject to AQB-required coursework.

These rules are intended to implement Iowa Code sections 543D.5, 543D.8, 543D.9, and 543D.22.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 7
“Disciplinary Actions Against Certified and Associate Appraisers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 7 establishes the disciplinary actions for the protection and well-being of those persons who may rely upon registered associate appraisers or certified appraisers for the performance of real property appraisals within the state and for clients in the state. The chapter also establishes the standards of practice that govern all real property appraisal activities required by Uniform Standards of Professional Appraisal Practice (USPAP). The intended benefit of this rulemaking is to ensure the public and licensees are aware of the disciplinary grounds against licensees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Professional standards of practice are undoubtedly associated with costs to the licensed appraiser. Appraisers must adhere to USPAP, which is a manual that comes at a cost to the appraiser or the appraisers' firm/employer. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per offense. The Board frequently issues education in lieu of fines, which have varying costs.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rulemaking is to ensure public safety and that licensees are aware of standard of practice and potential disciplinary grounds.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Real estate appraisers are licensed service providers regulated in accordance with federal and state law. Disciplinary action is a potential pathway to hold licensees accountable and ensure compliance with federal law.

- Qualitative description of impact:

Establishing disciplinary actions aims to ensure safety for the consumer and knowledge for the licensee. In addition, these rules are required by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates USPAP or regulations. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.75 full-time equivalent (FTE) position. The cost of performing required Standard 3/4 reviews on appraisal reports is \$425 per residential report and \$900 minimum per general report. The average number of reviews performed per complaint is two.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa follows the standards set by FIRREA. Inaction and noncompliance with federal law would prohibit real estate appraisers from practicing this profession in Iowa. Currently practicing Iowa licensees may move out of state to practice in a state that does license their profession in accordance with federal law.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa follows the standards set by FIRREA. The Appraisal Foundation (TAF) sets the congressionally authorized standards and qualifications for this profession. Since these requirements are set federally, the state has minimal options to change discipline methodology in accordance with federal law.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Iowa currently follows the standards set by TAF. TAF sets the congressionally authorized standards and qualifications for this profession. The Board has not identified any other alternatives to these disciplinary rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board follows the standards set by TAF in accordance with federal law. To ensure compliance, changes were not made to federal requirements through Administrative Code. Revisions to this chapter are in line with streamlining and simplifying the chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing disciplinary actions against appraisers. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
DISCIPLINARY ACTIONS AGAINST CERTIFIED AND
ASSOCIATE APPRAISERS

193F—7.1(17A,272C,543D) Disciplinary authority. The board is empowered to regulate the real estate appraiser profession for the protection and well-being of the public trust. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of applicants and licensees and to address disciplinary concerns under Iowa law.

193F—7.2(543D) Standards of practice. All registered associate appraisers and certified real estate appraisers will comply with the USPAP edition applicable to each appraisal assignment.

193F—7.3(17A,272C,543D) Grounds for discipline. The board may initiate disciplinary action against a registered associate appraiser or a certified real estate appraiser based on any one or more of the following grounds:

7.3(1) Code violations. Any violation of Iowa Code provision that authorizes imposition of licensee sanctions:

- a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed;
- b. Attempting to file or filing with the board any false or forged diploma, course certificate, identification, credential, license, registration, certification, examination report, affidavit, or other record;
- c. Failing or refusing to provide complete information in response to a question on an application for initial or renewal registration or certification; or
- d. Otherwise participating in any form of fraud or misrepresentation by act or omission.

7.3(2) Professional incompetence. Professional incompetence 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 practitioners in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.
- d. Failure to conform to the minimal standards of acceptable and prevailing practice of registered associate appraisers or certified real property appraisers in this state.
- e. A willful, repeated, or material deviation from USPAP standards, or other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest, including any violation of USPAP's competency rule.

7.3(3) Deceptive practices. Deceptive practices are grounds for discipline, whether or not actual injury is established, and include but are not limited to:

- a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of real property appraising.
- b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a registrant or certificate holder in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.
- c. Falsification of business records or appraisal logs through false or deceptive representations or omissions.
- d. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule.
- e. Making any false or misleading statement in support of an application for registration or certification submitted by another.
- f. Knowingly presenting as one's own a certificate or registration, certificate or registration number, or signature of another or of a fictitious registrant or certificate holder, or otherwise falsely impersonating a certified appraiser or registered associate appraiser.
- g. Representing oneself as a registered associate appraiser or certified appraiser when one's registration or certificate has been suspended, revoked, surrendered, or placed on inactive or retired status, or has lapsed.
- h. Permitting another person to use the registrant's or certificate holder's registration or certificate for any purposes.
- i. Fraud in representations as to skill or ability.
- j. Misrepresenting a specialized service as an appraisal assignment in violation of Iowa Code section 543D.18(3) or (5).

7.3(4) Unethical, harmful or detrimental conduct. Registrants and certificate holders engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

- a. Verbal or physical abuse, improper sexual contact, or making suggestive, lewd, lascivious, offensive or improper remarks or advances, if such behavior occurs within the practice of real property appraising or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of real estate appraising would place the public at risk.
- b. Engaging in a professional conflict of interest, or otherwise violating the public trust, as provided in USPAP's ethics rule.
- c. Aiding or abetting any unlawful activity for which a civil penalty can be imposed under rule 193F—16.2(543D).

7.3(5) Lack of proper qualifications.

- a. Continuing to practice as a registered associate appraiser or certified real property appraiser without satisfying the continuing education for registration or certificate renewal.
- b. Acting as a supervisor without proper qualification, as provided in rule 193F—15.3(543D).
- c. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the registrant's or certificate holder's ability to practice in a safe and competent manner.
- d. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b," or that impairs a practitioner's ability to safely and skillfully practice the profession.
- e. Failure to meet the minimum qualifications for registration as an associate appraiser or certification as a certified real property appraiser.

f. Practicing outside the scope of a certification, or outside the scope of a supervisor's certification.

7.3(6) Negligence by the registrant or certificate holder in the practice of the profession. Negligence by the registrant or certificate holder in the practice of the profession includes but is not limited to:

a. A failure to exercise due care including negligent delegation of duties to or supervision of associate appraisers, or other employees, agents, or persons, in developing an appraisal, preparing an appraisal report, or communicating an appraisal, whether or not injury results.

b. Neglect of contractual or other duties to a client.

7.3(7) Professional misconduct.

a. Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of real estate appraising.

b. Engaging in any conduct that subverts or attempts to subvert a board investigation.

c. Revocation, suspension, or other disciplinary action taken by a licensing authority of this state or another state, territory, or country. A stay by an appellate court will not negate this obligation; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action will be vacated.

d. A violation of Iowa Code section 543D.18.

e. A violation of Iowa Code section 543D.20 (limitations on persons assisting in the development or reporting of a certified appraisal).

f. Failure to retain records as provided in Iowa Code section 543D.19.

g. Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

7.3(8) Willful or repeated violations. The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 543D, or any administrative rule adopted by the board in the administration or enforcement of such chapters.

7.3(9) Failure to report.

a. Failure by a registrant or certificate holder or an applicant for a registration or certificate to report in writing to the board any revocation, suspension, or other disciplinary action taken by a licensing authority, in Iowa or any other jurisdiction, within 30 calendar days of the final action.

b. Failure of a registrant or certificate holder or an applicant for a registration or certificate to report, within 30 calendar days of the action, any voluntary surrender of a professional license to resolve a pending disciplinary investigation or action, in Iowa or any other jurisdiction.

c. Failure to notify the board of a criminal conviction within 30 calendar days of the action, regardless of the jurisdiction where it occurred.

d. Failure to notify the board within 30 calendar days after occurrence of any adverse judgment in a professional or occupational malpractice action, or settlement of any claim involving malpractice, regardless of the jurisdiction where it occurred.

e. Failure to report another registrant or certificate holder to the board for any violation listed in these rules, pursuant to Iowa Code section 272C.9(2), promptly after the registrant or certificate holder becomes aware that a reportable violation has occurred.

f. Failure to report to the board the appraiser's principal place of business and any change in the appraiser's principal place of business within 30 calendar days of such change.

g. Failure of an associate appraiser or supervisor to timely respond to board requests for information, as provided in 193F—Chapter 4.

7.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

7.3(11) *Conviction of a crime.*

a. Conviction, in this state or any other jurisdiction, of any felony offense that directly relates to the profession, or of any crime which is substantially related to the qualifications, functions, duties or practice of a person developing or communicating real estate appraisals to others. Any crime involving deception, dishonesty or disregard for the safety of others will be deemed directly related to the practice of real property appraising. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another jurisdiction will be conclusive evidence of the conviction. "Conviction" includes any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, withheld, or not entered, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction will be vacated. A conviction qualifies as a felony offense if the offense is designated as a felony in the jurisdiction in which the conviction occurred, or if the offense is committed in this state, the offense would be a felony, without regard to its designation elsewhere. An offense directly relates to the profession if either:

(1) The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession, or

(2) The circumstances under which an offense was committed are circumstances customary to the profession.

b. Notwithstanding the foregoing, a conviction may be grounds for revocation or suspension only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543D and 2007 Iowa Acts, Senate File 137.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 8
“Investigations and Disciplinary Procedures”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 8 establishes the provisions for investigatory and disciplinary procedures that the Real Estate Appraiser Examining Board has authority over. The benefit is to clearly specify to all parties their rights and responsibilities during the investigation and discipline process.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
There could be additional costs to a licensee if the licensee retains counsel to represent the licensee during the course of the investigation. Additionally, if disciplinary action is taken against a licensee, a fine could be issued.
 - Classes of persons that will benefit from the proposed rulemaking:
The public and professionals benefit from the proposed rules by clearly establishing responsibilities and rights regarding complaints and investigations. In 2022, the Board reviewed more than 50 cases, which resulted in 38 formal complaints and 11 consent orders for 13 of those cases.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The Board believes that the benefits achieved justify the cost because appraisers are subject to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).
 - Qualitative description of impact:

Establishing responsibilities and rights for licensees ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The Board and Board staff review complaints. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.75 full-time equivalent (FTE) position.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Inaction would result in noncompliance with federal law. Currently practicing Iowa licensees may move out of state to practice in a state that does license their profession in accordance with federal law.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa follows federal regulations set by the Appraisal Foundation (TAF). TAF sets the congressionally authorized standards and qualifications for this profession.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board considered accepting a voluntary surrender of a license to resolve disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. The Board felt that this would not protect the public as this would not be required to be reported to the Appraisal Subcommittee National Registry. The Registry is used to send daily reports to every jurisdiction and is also used when licensing by reciprocity in most states.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

As stated above, the alternate method was rejected due to the lack of requirement to report to the Registry.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing requirements for appraisers. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 8 and adopt the following new chapter in lieu thereof:

CHAPTER 8 INVESTIGATIONS AND DISCIPLINARY PROCEDURES

193F—8.1(272C,543D) Disciplinary action. The real estate appraiser examining board has authority under applicable law to impose discipline for violations of law.

193F—8.2(17A,272C,543D) Initiation of disciplinary investigations. The board may initiate a licensee disciplinary investigation upon the board's receipt of information suggesting that a licensee may have violated the licensee's legal obligations under the Iowa Code or board rule.

193F—8.3(17A,272C,543D) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member will abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193F—8.4(272C,543D) Complaints. Written complaints need to be submitted to the board through the board's online system. The board may also initiate its own complaints.

8.4(1) Role of complainant. The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding which may be initiated by the board based in whole or in part on information provided by the complainant.

8.4(2) Role of the board. The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

8.4(3) Initial complaint screening. Tips that are not complaints will be evaluated by the disciplinary committee but may not be assigned a case number or further investigated. Complaints that have been submitted and assigned a case number will be referred to the discipline committee. Final decisions on complaints will be made by the board.

193F—8.5(272C,543D) Case numbers. Whether based on written complaint received by the board or complaint initiated by the board, all complaint files will be tracked by a case numbering system. Once a case file number is assigned to a complaint, all persons communicating with the board regarding that complaint are encouraged to include the case file number to facilitate accurate records and prompt response.

193F—8.6(17A,272C,543D) Investigation procedures.

8.6(1) *Disciplinary committee.* The board chairperson will annually appoint two to three members of the board to serve on the board's disciplinary committee. The disciplinary committee is a purely advisory body that reviews complaint files referred by the board's executive officer, generally supervises the investigation of complaints, and makes recommendations to the full board on the disposition of complaints. Members of the committee will not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the board.

8.6(2) *Screening of complaints.* All complaints presented to the board will be screened, evaluated and, where appropriate, investigated.

193F—8.7(17A,272C,543D) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected licensee, the committee may grant the licensee any opportunity to appear before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

8.7(1) Because disciplinary investigations are confidential, only the licensee's legal representative may attend the information discussion with the board.

8.7(2) Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, licensees who desire to attend an informal discussion waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

8.7(3) Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

8.7(4) The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion.

193F—8.8(272C,543D) Peer review committee (PRC). A peer review committee may be appointed by the board to investigate a complaint.

193F—8.9(17A,272C,543D) Closing complaint files.

8.9(1) *Grounds for closing.* The board may close a complaint file, with or without prior investigation.

8.9(2) *Cautionary letters.* The board may issue a confidential letter of caution to a licensee when a complaint file is closed which informally cautions or educates the licensee about matters which could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

8.9(3) *Reopening closed complaint files.* The board may reopen a closed complaint file if additional information arises after closure that provides a basis to reassess the merits of the initial complaint. Complaint files may also be reopened when a complaint has been previously closed due to the lapse of the licensee's license.

193F—8.10(17A,272C,543D) Initiation of disciplinary proceedings. Disciplinary proceedings may only be initiated by the affirmative vote of a majority of a quorum of the board at a public meeting. Board members who are disqualified will not be included in determining whether a quorum exists. If, for example, two members of the board are disqualified, three members of the board constitute a quorum of the remaining five board members for purposes of voting on the case in which the two members are disqualified. When three or more members of the board are disqualified or otherwise unavailable for any reason, the executive officer may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11(5).

193F—8.11(543D) Decisions. The board will make findings of fact and conclusions of law, and set forth the board's decision, order, or both in the case. The board's decision may include, without limitation, any of the following outcomes, either individually or in combination:

1. Dismissing the charges;
2. Suspending or revoking the appraiser's certification or associate's registration as authorized by law;
3. Imposing civil penalties, the amount to be set at the discretion of the board but not exceeding \$1,000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 and chapter 272C or for any repeat offenses;
4. Imposing a period of probation, either with or without conditions;
5. Obligating the licensee to undergo reexamination;
6. Obligating the licensee to take additional professional education, reeducation, or continuing education;
7. Issuing a citation and a warning;
8. Imposing desk review of the appraiser's work product;
9. Issuing a consent order either with or without conditions;
10. Imposing consultation with one or more peer reviewers;
11. Revoking an appraiser's eligibility to supervise;
12. Compelling submission of monthly logs;
13. Placing limitations on a licensee's practice, such as removing a licensee's authority to act as an instructor; and
14. Imposing any other form of discipline authorized by a provision of law that the board, in its discretion, believes is warranted under the circumstances of the case.

193F—8.12(272C,543D) Mitigating and aggravating factors. Factors the board may consider when determining whether to impose discipline and what type of discipline to impose include but are not limited to:

- 8.12(1) History and background of respondent.**
- a. Whether the respondent was a registered associate appraiser or a certified appraiser at the time of the violation.
 - b. Prior disciplinary history or cautionary letters.
 - c. Length of certification or registration at the time of the violation.
 - d. Disciplinary history of current or prior supervisor.
 - e. Degree of cooperation with investigation.
 - f. Extent of self-initiated reform or remedial action after the date of the violation.
 - g. Whether the volume or geographic range of the respondent's practice is, or was at the time of the violation, reasonable under the circumstances.

h. Whether the respondent practiced with a lapsed, inactive, retired, suspended, revoked, or surrendered certificate or registration.

8.12(2) Nature of violations, not limited to:

- a.* Length of time since the date of the violation.
- b.* Whether the violation is isolated or recurring.
- c.* Whether there are multiple violations or appraisals involved.
- d.* Whether the violation is in the nature of an error or situational carelessness or neglect, or reflects a more fundamental lack of familiarity with applicable appraisal methodology or standards.
- e.* Indicia of bad faith, false statements, deceptive practices, or willful and intentional acts, whether within the circumstances of the violation or in the course of the board's investigation or disciplinary proceeding.
- f.* Evidence of improper advocacy or other violation of the USPAP ethics rule or of Iowa Code section 543D.18 or 543D.18A(1).
- g.* The clarity of the issue or standard involved.
- h.* Whether the respondent practiced outside the scope of practice authorized by respondent's certification or registration.
- i.* Whether the violation relates to the respondent's supervisory role, the respondent's individual appraisal practice, or both.

8.12(3) Interest of the public, not limited to:

- a.* Degree of financial or other harm to a client, consumer, lending institution, or others.
- b.* Risk of harm, whether or not the violation caused actual harm.
- c.* Economic or other benefit gained by respondent or by others as a result of the violation.
- d.* Deterrent impact of discipline.
- e.* Whether the respondent issued a corrected appraisal report when warranted.

193F—8.13(272C,543D) Voluntary surrender. The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board will not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such voluntary surrender is considered disciplinary action and will be published in the same manner as is applicable to any other form of disciplinary order.

193F—8.14(272C,543D) Reinstatement. The following provisions apply to license reinstatement proceedings:

8.14(1) The board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on an application to reinstate if the applicant requests an informal appearance in the application and agrees not to seek to disqualify, on the ground of personal investigation, board members or staff before whom the applicant appears.

8.14(2) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193F—8.14(543D).

8.14(3) The board will not grant an application for reinstatement when the initial order that revoked, suspended or placed limitations on the license, denied license renewal, or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

- a.* All terms of the sentencing or other criminal order have been fully satisfied;
- b.* The applicant has been released from confinement and any applicable probation or parole; and
- c.* Restitution has been made or is reasonably in the process of being made to any victims of the crime.

8.14(4) A state and national criminal history check may be performed on any applicant applying to reinstate registration or credential consistent with Iowa Code section 543D.22.

These rules are intended to implement Iowa Code sections 543D.5, 543D.17, and 543D.18 and chapters 17A and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 9
“Renewal, Expiration and Reinstatement of Certificates and Registrations, Retired Status, and Inactive Status”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 9 establishes the provisions for those seeking to renew, reinstate and/or change status of their appraiser license in Iowa. The benefit is to allow individuals to renew or reinstate licensure in the state of Iowa as required by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation (TAF).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for costs associated with renewals and reinstatements. The chart below indicates the State’s renewal fees and the number of continuing education hours required. The chart also indicates the cost for other states as well as their continuing education requirements. Continuing education is required for those who are seeking active status since the Board has the option for inactive status as well as a retired status in this chapter.

Estimation of the cost for continuing education is \$535.

| | Iowa | South Dakota | Minnesota | Illinois | Missouri | Nebraska | Kansas |
|--|-------|-----------------|-----------|----------|----------|----------|--------|
| Certified General — Renewal | \$280 | \$780 | \$210 | \$530 | \$300 | \$630 | \$480 |
| Certified Residential — Renewal | \$280 | \$750 | \$210 | \$530 | \$300 | \$630 | \$480 |
| Associate Appraiser — Renewal | \$200 | \$350 | \$130 | \$300 | \$300 | \$550 | \$400 |
| Continuing Education Requirements (hrs) | 28 | 28 | 28 | 29 | 30 | 28 | 28 |

Some states did not indicate the National Registry fee of \$40 per year.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum requirements ensures that licensees are competent to practice. Individuals who wish to engage in federally regulated transaction appraisals must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

For renewals, reinstatement, and status changes the applicant is required to be licensed and in good standing. The continuing education requirements set by the AQB would have been completed prior to renewal and reinstatement in the state of Iowa. Those licensed in active status will be required to complete the continuing education requirement set by the AQB; the average cost of the 28 hours of continuing education was found to be approximately \$535 per renewal. These hour requirements are consistent with those of surrounding states on the lower end of the spectrum, matching South Dakota, Minnesota, Nebraska, and Kansas. Iowa's fee for the certified residential appraiser renewal and associate appraiser renewal are lower than those of surrounding states. The certified general appraiser renewal is significantly lower than all but one surrounding state.

The cost for a reinstatement varies greatly since licensees are required to show proof of the education requirements from the date in which they last reported. If an applicant for reinstatement resides in another state and holds an active license in good standing, the Board recommends a new reciprocity license application due to this process and burden on the applicant.

- Qualitative description of impact:

Establishing minimum requirements for reinstatement and renewal aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which includes managing applications for initial licenses, temporary practice permits, renewals and reinstatements. Board staff review applications for reinstatement and renewal licenses, answer inquiries on licensing, and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Federal law requires some applications be completed within five days of receipt for completion, which is demanding on resources. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There are no anticipated changes to state revenue due to the proposed repromulgated rules. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa currently follows the minimum standards for reinstatement and renewals set by FIRREA. If Iowa was not to follow the minimum standards, the state would not be compliant with federal law.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa currently follows the minimum standards for reinstatement and renewals set by TAF. TAF sets the congressionally authorized standards and qualifications for this profession.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No other alternate method was considered by the agency because the regulations are set by TAF in accordance with federal law. The Board considered merging this chapter into the certified appraiser licensing chapter but felt this could cause confusion.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost effective alternative to the renewal and reinstatement of a licensee. The Board believes all current requirements assure public safety and ensure minimum competency of care is provided to Iowans. In addition, the Board follows the minimum standards set by the AQB criteria for continuing education.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing requirements for appraisers. The cost renewal fees are consistent with or less than surrounding states.

While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of

the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
RENEWAL, EXPIRATION AND REINSTATEMENT OF
CERTIFICATES AND REGISTRATIONS, RETIRED STATUS, AND INACTIVE STATUS

193F—9.1(272C,543D) Biennial renewal.

9.1(1) Licenses have to be renewed on a biennial basis or they lapse.

9.1(2) Persons licensed before June 30, 2024, will maintain their biennial renewal timelines. For licensees initially licensed after June 30, 2024, all licenses will expire biennially on June 30.

Example: Certified general licensee obtains licensure on May 25, 2025. License will expire on June 30, 2026, with the first year being a partial year.

9.1(3) An application to renew a certificate or registration has to be submitted through the board's online system.

9.1(4) All continuing education claimed on a biennial renewal needs to have been acquired during the renewal period. In addition, all continuing education claimed on a biennial renewal has to have been taken and completed prior to submission of the renewal application.

193F—9.2(272C,543D) Notices.

9.2(1) The board may send renewal notices to licensed appraisers. However, it is the licensee's responsibility to renew timely.

9.2(2) Certified and associate appraisers have to ensure that their contact information on file with the board office is current and that the board is notified within 30 days of any changes.

193F—9.3(272C,543D) Renewal procedures.

9.3(1) *Date of filing.* Certified and associate appraisers have to file a complete renewal application with the board by the June 30 deadline in the biennial renewal year. An application will be deemed filed on the date of board receipt, the date of electronic submission or, if payment is mailed, the date postmarked but not the date metered.

9.3(2) *Continuing education.* An applicant for renewal has to report the applicant's compliance with the continuing education obligations provided in 193F—Chapter 11.

9.3(3) *Background disclosures.* An applicant for renewal has to disclose such background and character information as the board requests, which may include disciplinary action taken by any jurisdiction regarding a professional license of any type, the denial of an application for a professional license of any type by any jurisdiction, and the conviction of any crime.

9.3(4) *Insufficient applications.* The board will reject applications that are insufficient.

9.3(5) *Resubmission of rejected applications.* The board will promptly notify an applicant of the basis for rejecting an insufficient renewal application. Applicants may correct deficiencies and resubmit an application. Resubmitted applications are deemed received on the date of electronic submission.

9.3(6) *Administrative processing not determinative.* The administrative processing of an application to renew a certificate or registration will not prevent the board from subsequently challenging the application based on new information, such as after-acquired information of continuing education violations.

9.3(7) *Denial of timely and sufficient application to renew.* If grounds exist to deny an application to renew, the board will send notification to the applicant stating the grounds for denial.

193F—9.4(272C,543D) Failure to renew.

9.4(1) The certificate or registration of a certified or associate appraiser lapses unless the appraiser submitted a timely and sufficient renewal application by the expiration date.

9.4(2) Certified and associate appraisers are not authorized to practice or to hold themselves out to the public as certified or registered appraisers during the period of time that the certificate or registration is lapsed. Any violation of this subrule will be grounds for discipline.

9.4(3) *Reinstatement.* The board may reinstate a lapsed certificate or registration upon the applicant's submission of an application to reinstate and completion of all of the following:

- a. Paying a penalty as provided by board rule; and
- b. Paying the current renewal fee as provided by board rule; and
- c. Paying the ASC National Registry fee as provided by board rule; and
- d. Completing a state and national criminal history check as required by law; and
- e. Providing evidence of completed continuing education outlined in rule 193F—11.2(272C,543D), as modified for associate appraisers in subrule 9.4(6), if the licensee wishes to reinstate to active status; and

- f. Providing a written statement outlining the professional activities of the applicant in the state of Iowa during the period in which the applicant's license had lapsed. The statement will describe all appraisal services performed, with or without the use of the titles described in Iowa Code section 543D.15, for all appraisal assignments that federal or state law, rule, or policy mandate to be performed by a certified real estate appraiser.

9.4(4) Reinstating associate appraisers are to follow special continuing education obligations. The board seeks to ensure that associate appraisers make progress toward full completion of all qualifying education needed for eventual certification, as provided in the rules. As a result, an associate appraiser applying to reinstate a registration that has been lapsed for 12 months or longer will complete the most recent seven-hour USPAP course, and only qualifying education toward the continuing education needed for reinstatement, until all qualifying education has been completed. If the applicant has already completed all qualifying education or has to have continuing education hours beyond those needed to fully complete all qualifying education, the applicant may use any approved continuing education course in addition to the mandatory seven-hour USPAP course.

193F—9.5(272C,543D) Inactive status.

9.5(1) *General purpose.* A licensee who is not engaged in Iowa in any practice licensed by the board may allow a license to lapse or register as inactive. The board will continue to maintain a database of persons registered as inactive as well as those whose license has lapsed. A person registered in inactive status is not allowed to perform services in this state regulated by the board. Continuing education is not required for licensees in inactive status.

9.5(2) *Eligibility.* A person holding an active license may apply on forms through the board's online system to register as inactive if the person is not engaged in appraisal practice in the state of Iowa for which a certificate or associate registration is needed. Inactive status is not available to an individual who has had a board-issued license revoked or suspended. A person seeking inactive status may be actively engaged in the practice of real estate appraising in another jurisdiction.

9.5(3) *Affirmation.* The application form will contain a statement in which the applicant affirms that the applicant will not engage in any conduct that would require an Iowa license without first complying with all rules governing reactivation to active status. A person in inactive status may reactivate to active status at any time pursuant to subrule 9.5(6).

9.5(4) *Renewal.* A person registered as inactive will need to renew biennially. Licensees in inactive status may continue to renew in inactive status. Active licensees may register in inactive status if, for instance, they have not completed all continuing education obligations needed for active status renewal. Any licensee in inactive status must satisfy all outstanding continuing education obligations before reinstating to active status. Continuing education obligations do not accrue during the period of inactive registration.

9.5(5) *Grounds for discipline.* Licensees are not authorized to practice or to hold themselves out to the public as board-licensed appraisers during the period of time that the licensee is in retired or inactive status. Any violation of this subrule will be grounds for discipline.

9.5(6) *Reactivation.* A person registered as inactive will apply to reactivate to active status prior to engaging in any practice in Iowa that necessitates active licensure by the board. An application to reactivate to active status will be through the board's online system. Prior to reactivation to active status, the applicant has to complete all education that would have been needed had the applicant been on active status, including the required courses set by the AQB criteria. All such continuing education has to be verified whether or not the applicant has been in active practice in another jurisdiction. Such an applicant will be given credit for the most recent renewal fees previously paid if the applicant applies to reactivate in the same biennium at other than the applicant's regular renewal date. An associate licensee changing from active to inactive status during a biennial renewal period will not, however, be entitled to a refund of any of the fees previously paid to attain active status.

193F—9.6(272C,543D) Retired status. A certified licensee may place the licensee's license in retired status. For purposes of this rule, the term "retired" means the person has retired from working as a certified appraiser and has requested to be placed in retired status through the board's online system. A licensee in retired status may request that the license be placed back into active status so long as the licensee is still within the biennial period of the last active status. The board will not provide a refund of biennial registration and certification fees when an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Licensees in retired status are exempt from the renewal obligation. While in retired status, appraisers cannot hold themselves out to the public as being certified appraisers during the period of time that the license is in retired status.

193F—9.7(272C,543D) Property of the board. Every license issued by the board will, while it remains in the possession of the holder, be preserved by the holder but will, nevertheless, always remain the property of the board.

These rules are intended to implement Iowa Code section 543D.5.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 10
“Reciprocity”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 10 establishes the pathway for those seeking real estate appraiser certification/permits in Iowa. This gives individuals an avenue to provide services to Iowans either on an ongoing or a temporary basis. It also allows for a certified appraiser moving to the state of Iowa to be licensed prior to arriving, thus attracting people to the state.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. The fee for initial certified real estate license is \$280 and the renewal fee is \$280, with \$80 of the license fee forwarded to the Appraisal Foundation (TAF) Appraisal Subcommittee (ASC) National Registry. The fee for a temporary practice permit is \$100 per engagement letter. These costs vary greatly in surrounding states for initial and renewal licensing fees for certified real estate appraisers.

| | Iowa | South Dakota | Minnesota | Illinois | Missouri | Nebraska | Kansas |
|--|-------|-----------------|-----------|----------|----------|----------|--------|
| Certified General License — Initial | \$280 | \$880 | \$260 | \$315 | \$300 | \$680 | \$530 |
| Certified Residential — Initial | \$280 | \$830 | \$260 | \$315 | \$300 | \$680 | \$530 |
| Certified General — Renewal | \$280 | \$780 | \$210 | \$530 | \$300 | \$630 | \$480 |
| Certified Residential — Renewal | \$280 | \$750 | \$210 | \$530 | \$300 | \$630 | \$480 |
| Temporary Practice Permit | \$100 | \$200 | \$150 | \$100 | \$150 | \$150 | \$50 |

Chart reflects a two-year renewal cycle fee for each state.

Some states did not indicate the National Registry fee of \$40 per year.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing and permit requirements ensures that licensees are competent to practice. Individuals who wish to engage in federally regulated transaction appraisals on an ongoing basis or in a temporary basis (based on an engagement letter) must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

For reciprocity and temporary practice permits, the applicant is required to be licensed and in good standing in another jurisdiction. The educational and qualifying education requirements set by the Appraisal Qualification Board (AQB) would have been completed prior to licensure in the state of Iowa. Those licensed by reciprocity will be required to complete the continuing education requirement set by the AQB; the average cost of the 28 hours of continuing education was found to be around \$535 per renewal.

Licensing fees are \$280 for an initial and renewal license. Temporary practice permits are \$150 per engagement letter. In 2021, the certified real estate appraiser fee was lowered from \$390 to \$280 and the temporary practice permit fee was lowered from \$150 to \$100; in addition, a change was made that allowed unlimited temporary practice permits (previously a maximum of two permits per calendar year).

- Qualitative description of impact:

Establishing minimum requirements for licensure and permits aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which includes managing applications for initial licenses, temporary practice permits, renewals, and reinstatements. Board staff review applications for initial and renewal licenses, answer inquiries on licensing, and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Federal requirements that require temporary practice permits to be completed within five days of receipt, and verifications of licensure that hold the same federal requirement for completion, are demanding on resources. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

The effect will stay the same; no changes are foreseen. In 2022, the maximum number of temporary practice permits the state was allowed to issue per licensee was two, and now it is unlimited, thus increasing revenue for the State of Iowa.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa currently follows the minimum standards for reciprocity licensure and temporary practice permits set by FIRREA.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa currently follows the minimum standards for reciprocity and temporary practice permits set by TAF. TAF sets the congressionally authorized standards and qualifications for this profession.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative method was considered by the agency because the regulations are set by TAF in accordance with federal law. The Board considered merging this chapter into the certified appraiser licensing chapter but felt this could cause confusion.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost effective alternative to the licensure by reciprocity or temporary practice permits. The Board believes all current requirements assure public safety and ensure minimum competency of care is provided to Iowans. In addition, the board follows the minimum standards set by the AQB criteria.

Federal requirements that require temporary practice permits to be completed within five days of receipt, and verifications of licensure that hold the same federal requirement for completion, are demanding on resources.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing requirements for appraisers. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
RECIPROCITY

193F—10.1(543D) Nonresident certification by reciprocity.

10.1(1) A nonresident of Iowa seeking certification in this state can apply for reciprocity through the board's online system and pay the board-established fee.

10.1(2) The board may issue a reciprocal certificate to a nonresident individual who is certified and demonstrates good standing in another state. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the good standing obligation without additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee will need to supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal.

10.1(3) A reciprocal certified appraiser will comply with all provisions of Iowa law and rules.

10.1(4) Reciprocal certified appraisers are obligated to pay the federal registry fee as set forth in board rule.

193F—10.2(543D) Temporary practice permit.

10.2(1) The board will recognize, on a temporary basis, the license of a certified appraiser issued by another state for a period of six months, unless the applicant requests, and is approved for, a one-time extension. An extension request has to be received prior to the expiration date of the issuance of the temporary practice permit. An extension may be granted for up to six months past the original expiration date so long as the applicant is still eligible for a temporary practice permit.

10.2(2) The appraiser has to apply through the board's online system. The appraiser seeking a temporary practice permit must meet the other qualifying factors associated with reciprocity, including good standing and payment of the appropriate fee. The temporary practice permit will authorize the licensee to perform appraisal on the properties listed on the permit.

10.2(3) An appraiser holding an inactive, retired, or lapsed certificate as a real estate appraiser in Iowa may apply for a temporary practice permit if the appraiser holds an active, unexpired certificate as a real estate appraiser in good standing in another jurisdiction and is otherwise eligible for a temporary practice permit.

10.2(4) An appraiser who was previously a registered associate or certified appraiser in Iowa whose Iowa license has been revoked or surrendered in connection with a disciplinary investigation or proceeding is ineligible to apply for a temporary practice permit in Iowa.

10.2(5) The board may deny an application for a temporary practice permit based on prior discipline in this jurisdiction or other jurisdictions.

10.2(6) An appraiser holding an inactive, retired, or lapsed Iowa certificate who applies to reinstate to active status in Iowa will not be given credit for any fees paid during the biennial period for one or more temporary practice permits.

10.2(7) An appraiser holding a license to practice as a real estate appraiser in another jurisdiction may practice in Iowa without applying for a temporary practice permit or paying any fees as long as the appraiser does not perform appraisal services in Iowa that require licensure in this state.

10.2(8) The board will receive and approve an application for a temporary practice permit before the applicant is eligible to practice in Iowa under a temporary practice permit. Applicants will apply using the board's online system. The board will grant or deny all applications for temporary practice permits within the requirements set by the ASC. Applicants disclosing discipline or criminal convictions will need to attach supporting documentation so that the board can assess whether grounds exist to deny the application. Falsification of information or failure to disclose material information will be grounds to deny the application, deny subsequent applications, or to reinstate a lapsed or inactive Iowa license.

These rules are intended to implement Iowa Code sections 543D.10 and 543D.11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 11
“Continuing Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code section 543D.16

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
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Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 11 established the continuing education requirements for initial and renewal licensees, while also clarifying the requirements/processes for course providers that wish to provide education services to Iowa licensees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for costs associated with continuing education, and course providers are responsible for costs associated with course approvals.

The 28-hour continuing education requirement is set by the Appraisal Foundation (TAF) in the Appraisal Qualification Board (AQB) criteria. Iowa complies with the minimum set requirements. Out of the neighboring states (Illinois, Kansas, Minnesota, Missouri, Nebraska, and South Dakota), only Illinois and Missouri require more hours of continuing education at 29 hours and 30 hours, respectively.

The estimated cost for continuing education is \$535.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rule. Establishing minimum continuing education requirements ensures that licensees are competent to practice. Individuals who wish to engage in federally regulated transaction appraisals must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The continuing education requirements set by the AQB would have been completed prior to renewal in the state of Iowa. The average cost of the 28 hours of continuing education was found to be approximately \$535 per renewal.

- Qualitative description of impact:

Establishing minimum requirements for licensure and permits aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which includes managing applications for initial licenses, temporary practice permits, renewals, and reinstatements. Federal requirements mandate the state audit of a section of the licensing pool following renewals. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Based on the proposed repromulgated rules, there is no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa currently follows the minimum standards for continuing education set by FIRREA.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa currently follows the minimum standards for continuing education set by TAF. TAF sets the congressionally authorized standards and qualifications for this profession.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No other alternate method was considered by the agency because the regulations are set by TAF in accordance with federal law.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified a more cost effective alternative to the continuing education requirements. The Board believes all current requirements assure public safety and ensure minimum competency of care is provided to Iowans. In addition, the Board follows the minimum standards set by the AQB criteria.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing requirements for appraisers and upholds minimum standards set through federal law. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
CONTINUING EDUCATION

193F—11.1(272C,543D) Definitions. For the purpose of these rules, the following definitions shall apply:

“Approved program” means a continuing education program, course, or activity that satisfies the standards set forth in these rules and has received advance board approval pursuant to these rules.

“Approved provider” means a person or an organization that has been approved by the board to conduct continuing education programs pursuant to these rules.

“Asynchronous” means that the instructor and student interact in an educational offering in which the student progresses at their own pace through structured course content and scheduled quizzes and examinations.

“Board” means the same as defined in Iowa Code section 543D.2(7).

“Continuing education” means education that is obtained by a person certified to practice real estate appraising in order to maintain, improve, or expand skills and knowledge obtained prior to initial certification or registration, or to develop new and relevant skills and knowledge, all as a condition of renewal.

“Credit hour” means the value assigned by the board, or the AQB, to a continuing or qualifying education program.

“Distance education” means any education process based on the geographical separation of student and instructor. “Distance education” includes asynchronous, synchronous, and hybrid educational offerings.

“Guest speaker” means an individual who teaches an appraisal education program on a one-time-only or very limited basis and who possesses a unique depth of knowledge and experience in the subject matter.

“Hybrid,” also known as a blended course, means a learning environment that allows for both in-person and online (synchronous or asynchronous) interaction.

“Live instruction” means an educational program delivered in a classroom setting where both the student and the instructor are present in the same room.

“Qualifying education” means education that is obtained by a person seeking certification as a real property appraiser prior to initial certification or registration.

“Synchronous” means that in an educational offering the instructor and student interact online simultaneously, as in a phone call, video chat or live webinar, or web-based meeting.

193F—11.2(272C,543D) Continuing education obligations.

11.2(1) Board-licensed appraisers have to demonstrate compliance with the continuing education set by the AQB criteria.

11.2(2) All continuing education credit hours may be acquired in approved education programs.

11.2(3) Instructors claiming continuing education credit may be requested to provide supporting documentation to ascertain course content and related details.

11.2(4) An applicant seeking to renew an initial license issued less than 185 days prior to renewal is not obligated to report any continuing education. An applicant seeking to renew an initial certificate or registration issued for 185 days to 365 days prior to renewal has to demonstrate completion of at least 14 credit hours, including the National USPAP continuing education course or its AQB equivalent. An applicant seeking to renew an initial certificate or registration issued 365 days prior to renewal or more has to demonstrate completion of at least 28 credit hours, including seven credit hours of the most recent National USPAP continuing education.

11.2(5) Prior to reinstatement or reactivation of a certified general or residential registration, a licensee in inactive, retired, or lapsed status has to complete all continuing education hours that would have been needed if the licensee was in active status. The hours will also include the most recent edition of a National USPAP Update course.

11.2(6) During each two-year renewal period, a continuing education program may be taken for credit only once.

11.2(7) At least 50 minutes of every class hour have to be attended by the student to count as an hour of continuing education.

11.2(8) An applicant may claim continuing education credits that have been approved by another jurisdiction that has a continuing education obligation for license renewal in that jurisdiction if the applicable program was approved by the other jurisdiction's appraisal regulatory body or the AQB for continuing education purposes at the time the applicant completed the course. The burden of proof in this regard is on the applicant. All other programs have to be approved upon application to the board pursuant to this chapter.

11.2(9) A person certified or registered to practice real estate appraising in Iowa will be deemed to have complied with Iowa's continuing education obligation for periods in which the person is a resident of another state or district having continuing education obligations for real estate appraising and meets all obligations of that state or district.

11.2(10) A person certified or registered to practice real estate appraising in Iowa who completes an education course approved by both the board and another appraiser regulatory body, for which the approved hours vary, will only be allowed to claim the hours approved by the board to meet the obligations of renewal of the person's associate registration or certified credential in Iowa. A person certified or registered to practice real estate appraising in Iowa who completes an educational course not approved in Iowa, but approved by either the AQB or by another appraiser regulatory body, may claim the hours awarded by either the AQB or the appraiser regulatory body of the other jurisdiction.

193F—11.3(272C,543D) Minimum program qualifications.

11.3(1) The board will only approve continuing education programs that provide a formal program of learning that contributes to the growth in the professional knowledge and professional competence of real estate appraisers.

11.3(2) Continuing education programs as listed in the AQB criteria are accepted by the board, as well as the following appraisal topics, which the board has determined are integrally related to appraisal topics in the state:

- a. Agriculture production and economics;
- b. Agronomy/soil; and
- c. Real estate appraisal technology (e.g., drones).

11.3(3) The following programs will not be acceptable:

- a. Sales promotion meetings held in conjunction with the appraiser's general business;
- b. Time devoted to breakfast, lunch, or dinner;

c. A program certified by the use of a challenge examination. The number of hours will be completed to receive credit hours; and

d. Programs that do not provide at least two credit hours.

11.3(4) Continuing education credit will be granted only for whole hours, with a minimum of 50 minutes constituting one hour.

11.3(5) Continuing education credit may be approved for university or college courses, when an official transcript is provided, in qualifying topics according to the following formula: Each semester hour of credit will equal 15 credit hours and each quarter hour of credit will equal 10 credit hours.

193F—11.4(272C,543D) Standards for provider and program approval. Providers and programs will satisfy the following minimum standards in order to be preapproved in accordance with the procedures established in this chapter and in order to maintain approved status.

11.4(1) The program will be taught or developed by individuals who have the education, training and experience to be considered experts in the subject matter of the program and competent in the use of teaching methods appropriate to the program.

11.4(2) Programs will be taught by instructors who have successfully completed an instructor development workshop within 24 months preceding board approval of the program. Certified USPAP instructors and instructors approved via a course delivery mechanism approval per the AQB criteria will be considered to have met this obligation.

11.4(3) In determining whether an instructor is qualified to teach a particular program, the board will consider whether the instructor has an ability to teach and an in-depth knowledge of the subject matter.

11.4(4) An instructor may demonstrate the ability to teach by meeting one or more of the following criteria:

- a. Hold a bachelor's degree or higher in education from an accredited college;
- b. Hold a current teaching credential or certificate in any real estate or real estate-related fields;
- c. Hold a certificate of completion in the area of instruction from an instructor institute, workshop or school that is sponsored by a member of the Appraisal Foundation;
- d. Hold a full-time current appointment to the faculty of an accredited college; and
- e. Other, as the board may determine.

11.4(5) An instructor may demonstrate in-depth knowledge of the program's subject matter by meeting one or more of the following criteria:

- a. Hold a bachelor's degree or higher from an accredited college with a major in a field of study directly related to the subject matter of the course the instructor proposes to teach, such as business, economics, accounting, real estate or finance;
- b. Hold a bachelor's degree or higher from an accredited college and have five years of appraisal experience related to the subject matter of the course the instructor proposes to teach;
- c. Hold a generally recognized professional real property appraisal designation or be a sponsor member of the Appraisal Foundation; and
- d. Other, as the board may determine.

11.4(6) Only AQB-certified USPAP instructors, listed on the website of the Appraisal Foundation may teach the National USPAP courses, or the AQB-approved equivalent.

11.4(7) Course content and materials will be accurate, consistent with currently accepted standards relating to the program's subject matter and updated no later than 30 days after the effective date of a change in standards, laws, or rules.

11.4(8) Programs will have an appropriate means of written evaluation by participants. Evaluations will include the relevance of the materials, effectiveness of presentation, content, facilities, and such additional features as are appropriate to the nature of the program.

11.4(9) No part of any course will be used to solicit memberships in organizations, recruit appraisers for affiliation with any organization or advertise the merits of any organization or sell any product, or service.

11.4(10) Providers will clearly inform prospective participants of the number of credit hours preapproved by the board for each program and all applicable policies concerning registration, payment, refunds, attendance obligations, and examination grading.

11.4(11) Procedures will be in place to monitor whether the person receiving credit hours is the person who attended or completed the program.

11.4(12) Providers will be accessible to students during normal business hours to answer questions and provide assistance as necessary.

11.4(13) Providers will comply with or demonstrate exemption from the provisions of Iowa Code sections 714.14 to 714.25.

11.4(14) Providers will designate a coordinator in charge of each program who will act as the board's contact on all compliance issues.

11.4(15) Programs will not offer more than eight credit hours in a single day.

11.4(16) Providers will not provide any information to the board, the public, or prospective students that is misleading in nature. For example, providers will not refer to themselves as a "college" or "university" unless qualified as such under Iowa law.

11.4(17) Providers will establish and maintain for a period of five years complete and detailed records on the programs successfully attended by each Iowa participant.

11.4(18) Providers will issue an individual certificate of attendance to each participant upon successful completion of the program.

11.4(19) Program providers and instructors are solely responsible for the accuracy of all program materials, instruction, and examinations. Board approval of a provider or program is not an assurance or warranty of accuracy and will not be explicitly or implicitly marketed or advertised as such.

11.4(20) Providers will apply for approval using the board's online system.

11.4(21) Providers will notify the board within 30 days of a change in the provider's primary contact, name, business address, or any other change that may affect the provider's tax identification number or bond obligations with the Iowa college aid commission.

193F—11.5(272C,543D) Acceptable distance education courses. Distance education involves geographical separation of student and instructor. A distance education course is acceptable to meet class hour obligations if it complies with the generic education criteria in the current AQB criteria.

193F—11.6(272C,543D) Applications for approval of programs. Applications for approval of programs will be submitted through the board's online system. All non-AQB courses are approved for 24 months, including the month of approval. Programs approved for distance education or by the AQB may be approved by the board. Board approval of a program will only be valid for the shortest period of time such a program is approved by either organization.

11.6(1) Approval will be obtained for each program separately. With the exception of hybrid courses, courses that are offered via more than one delivery method will require separate program approvals.

11.6(2) A nonrefundable fee of \$50 will be submitted for each program except for programs that are submitted for approval by the primary provider and that have been approved by the AQB through the AQB Course Approval Program (CAP).

11.6(3) All online applications and attachments will be submitted for approval at least 30 days prior to the first offering of each program or, if renewing, within 30 days of the course expiration date. The board will approve or deny each program, in whole or part, within 15 days of the date the board receives a fully completed application. Upon approval of an application for course offering, the board will specify the number of credit hours allowed. Payments for course program applications will be made within 30 calendar days of board approval or the application approval may be reversed.

11.6(4) Applications for non-AQB CAP courses will request information including, but not limited to, the following:

- a. Program description;
- b. Program purpose;

- c. Learning objectives that specify the level of knowledge or competency the student should demonstrate upon completing the program;
- d. Description of the instructional methods utilized to accomplish the learning objective;
- e. Identifying information for all guest speakers or instructors and such documentation as is necessary to verify compliance with the instructor qualifications described in this chapter;
- f. Copies of all instructor and student program materials or, in the case of a one-time course offering, a statement that attests all instructor and student materials will be submitted to the board within ten calendar days of the course offering;
- g. Copies of all examinations and a description of all grading procedures;
- h. A description of the diagnostic assessment method(s) used when examinations are not given;
- i. Such information as needed to verify compliance with board rules;
- j. The name, address, telephone number, and email address for the program's coordinator; and
- k. Such other information as the board deems reasonably needed for informed decision making.

11.6(5) Application forms for courses that are AQB CAP-approved will include information as deemed necessary for accurate documentation but may be more limited than information set forth in this chapter.

11.6(6) The board will assign each provider and program a number. This number will be placed on all correspondence with the board, all subsequent applications by the same provider, and all certificates of attendance issued to participants.

193F—11.7(272C,543D) Waiver of application fees. Application fees may be waived for approved programs sponsored by a governmental entity when the program is offered at no cost or at a nominal cost to participants. A request for waiver of application fees should be made by the provider or certificate holder at the time the application is filed with the board.

193F—11.8(272C,543D) Authority to approve education. The executive officer has the authority to approve or deny education applications subject to the applicant's right to a hearing as provided for in this chapter.

193F—11.9(272C,543D) Appraiser request for preapproval of continuing education programs. An appraiser seeking credit for attendance and participation in a program that is to be conducted by a provider not accredited or otherwise approved by the board will apply for approval to the board at least 15 days in advance of the commencement of the activity. The board will approve or deny the application in writing. The online application for prior approval of a continuing education activity will include the following fee and information:

1. Application fee of \$25;
2. School, firm, organization or person conducting the program;
3. Location of the program;
4. Title and hour-by-hour outline of the program, course or activity;
5. Credit hours requested for approval;
6. Date of program; and
7. Principal instructor(s).

193F—11.10(272C,543D) Appraiser request for postapproval of continuing education program. An appraiser seeking credit for attendance and participation in a program that was not conducted by an approved provider or approved by the licensing authority in another state or otherwise approved by the board may submit a request for credit for the program. Within 15 days after receipt of the request, the board will advise the requester in writing whether the program is approved and the number of hours allowed. Appraisers not complying with the obligation of this rule may be denied credit for the program. Application for postapproval of a continuing education program will include the following fee and information:

1. Application fee of \$25;

2. School, firm, organization or person conducting the program;
3. Location of the program;
4. Title of program and description of program;
5. Credit hours requested for approval;
6. Date(s) of program;
7. Student and instructor materials;
8. Principal instructor(s); and
9. Verification of attendance.

193F—11.11(272C,543D) Review of provider or program. The board on its own motion or upon receipt of a complaint or negative evaluation may monitor or review any approved program or provider and may withdraw approval of the provider or program and disallow all or any part of the approved hours granted to the provider based on evidence that the obligations of this chapter have not been met. The provider, as a condition of approval, agrees to allow the board or its authorized representatives to monitor ongoing compliance with board rules through means including, but not limited to, unannounced attendance at programs.

193F—11.12(272C,543D) Hearings. Any person aggrieved by board action related to this chapter may request a contested case hearing before the board.

These rules are intended to implement Iowa Code sections 543D.5, 543D.9 and 543D.16 and chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 12
“Fees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code section 543D.6

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 12 establishes the fees assessed for the licensing of real estate appraisers in the state of Iowa. It also includes a provision for the Appraisal Subcommittee Federal Financial Institutions Examination Council fees that are collected by the State of Iowa on licensees’ behalf. The benefit of the rulemaking is being upfront with prospective appraisers and the general public about the fees associated with each application type.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees are responsible for costs associated with application and national registry fees. Costs are not generally incurred by the public.
 - Classes of persons that will benefit from the proposed rulemaking:
The public and professionals benefit from the proposed rulemaking. Individuals who wish to engage in federally regulated transaction appraisals must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

Due to the nature of this chapter, there is no impact to the State. The Real Estate Appraiser Examining Board serves as a pass-through for the federally defined fees.

- Qualitative description of impact:

By establishing minimum requirements, the Real Estate Appraiser Examining Board aims to ensure safety for the licensee and consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which includes managing applications for initial licenses, temporary practice permits, renewals, and reinstatement. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

The effect will stay the same; no changes are foreseen. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed repromulgated rules do not make changes to the fees. The proposed revisions are meant to simplify and organize the chapter on fees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little to no cost implication.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative method was considered by the agency as the regulations are set by the Appraisal Foundation (TAF) in accordance with federal law. Iowa did reduce fees in 2021 for licensure, renewal, and temporary practice permits, thus making Iowa one of the least costly states for licensure.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Due to the recent reduction of fees, the Board felt no alternative method was warranted.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing requirements for appraisers. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
FEES

193F—12.1(543D) Fees.

| | |
|---|-----------------------------------|
| Initial examination application fee | \$150 |
| Biennial registration fee for active status (initial, reciprocal, renewal): | |
| Associate/Certified real property appraiser > one year | \$200 |
| Associate/Certified real property appraiser < one year | \$100 |
| Biennial registration fee for inactive status (initial, reciprocal, renewal): | |
| Certified real property appraiser | \$100 |
| Associate real property appraiser | \$50 |
| Temporary practice permit fee (each request) | \$100 |
| Reinstatement of a lapsed or retired license (lapsed or retired to active status) | \$150 (plus the registration fee) |
| Reactivation of an inactive or retired license (inactive or retired to active status) | \$50 (plus the registration fee) |
| Formal wall certificate | \$25 |
| Work product review fees: | |
| Original submission, certified residential | \$300 |
| Original submission, certified general | \$650 |
| Additional residential reports as requested by the board | \$150 per report |
| Additional nonresidential reports as requested by the board | \$250 per report |
| Voluntary submission of residential reports for review | \$150 per report |
| Voluntary submission of nonresidential reports for review | \$250 per report |
| Course application fee (non-AQB-approved courses and secondary providers) | \$50 |
| Pre-/post-course application fee | \$25 |
| Background check | \$51 |
| Add supervisory appraiser | \$25 |

| | |
|---|-----------------------|
| Add course instructor | \$10 |
| Waiver to administrative rules | \$25 |
| Late renewal of associate or certified | \$50 |
| ASC National Registry fee > one year, separate from registration fee (collected by the board for FFIEC) | \$80 |
| ASC National Registry fee < one year, separate from registration fee (collected by the board for FFIEC) | \$40 |
| Examination fee (and reexamination fee) (to be paid to the examination provider) | Current provider rate |

193F—12.2(543D) Prorating of registration fees. An applicant applying for initial or reciprocal registration or certification within 12 months from the applicant's renewal date, pursuant to rule 193F—9.1(543D), will pay half the fee. An applicant applying for initial or reciprocal registration or certification more than 12 months from the applicant's renewal date will pay the full registration fee. An applicant applying to reinstate or reactivate a lapsed registration or certification within 12 months from the applicant's renewal date, pursuant to rule 193F—9.1(543D), will pay half the renewal fee plus the applicable reactivation or reinstatement fee. An applicant applying to reinstate or reactivate a lapsed registration or certification more than 12 months from the applicant's renewal date will pay the full renewal fee plus the applicable reactivation or reinstatement fee.

These rules are intended to implement Iowa Code section 543D.6.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 16
“Enforcement Proceedings Against Nonlicensees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 16 establishes the enforcement proceedings against nonlicensees. The benefit of this rulemaking is protecting clients and residents in Iowa that require a certified appraiser for federally regulated transactions as required by federal statute.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Persons practicing real estate appraisal without a license will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:

Establishing minimum licensing and permit requirements ensures that licensees are competent to practice. Individuals who wish to engage in federally regulated transaction appraisals must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). Thus, having the enforcement proceedings against a nonlicensee is essential.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are no costs to the public. The expenses of the Board, per diems, and travel reimbursement are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. In the past year, the Board has issued a fine to one individual practicing without a license. This fine is set at

\$1,000 per incident. Due to the fact that only federally regulated transactions are required to be licensed with the state, a number of complaints are not within the Board's jurisdiction since they are not required to be licensed.

- Qualitative description of impact:

Establishing enforcement proceedings against nonlicensees aims to ensure safety for those who hold a professional license and the consumer. In addition, these rules are required by FIRREA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a nonlicensee violates Uniform Standards of Professional Appraisal Practice (USPAP) or regulations. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this board at approximately 0.75 full-time equivalent (FTE) position. The cost of performing required Standard 3/4 reviews on appraisal reports are \$425 per residential report and \$900 minimum per general report. The average number of reviews performed per complaint is two.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by offenders or establishments, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa follows the standards set by FIRREA. Inaction would mean noncompliance with federal law. Ultimately, licensees may leave the state to provide their services in a state in compliance with federal law.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa follows the standards set by FIRREA. The Appraisal Foundation (TAF) sets the congressionally authorized standards and qualifications for this profession.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Iowa currently follows the standards set by TAF. TAF sets the congressionally authorized standards and qualifications for this profession. The Board has not identified any other alternatives to these disciplinary rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board follows the standards set by TAF to ensure compliance with federal law. The Board did not make any recommendations that would lead to noncompliance with federal law.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing disciplinary actions against appraisers. Additionally, these proposed repromulgated rules uphold federal requirements. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 16 and adopt the following new chapter in lieu thereof:

CHAPTER 16
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

193F—16.1(543D) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 543D.21.

193F—16.2(543D) Grounds for imposing civil penalties. Grounds for issuing an order requiring compliance with Iowa Code chapter 543D or imposing civil penalties up to \$1,000 for each violation include:

16.2(1) Violating Iowa Code section 543D.15(1) “a.”

16.2(2) Failing to obtain a temporary practice permit under Iowa Code section 543D.11(2);

16.2(3) Falsely impersonating a licensee by using the certification or registration title, number or signature of a licensee, or by using the nonexistent certification or registration title, number or signature of a fictitious holder of a board-issued license.

16.2(4) Violating Iowa Code section 543D.21(4) “e.”

16.2(5) Violating Iowa Code section 543D.20(1) “a,” “b,” “c,” or “d.”

16.2(6) Violating Iowa Code section 543D.18A.

193F—16.3(543D) Notice of intent to impose civil penalties.

16.3(1) The notice of the board's intent to issue an order to compel compliance with Iowa Code section 543D.21 and to impose a civil penalty will be served upon the nonlicensee by certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel.

16.3(2) The notice will include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. Reference to the particular sections of the statutes and rules involved.
- c. A short, plain statement of the alleged unlawful practices.

- d.* The dollar amount of the proposed civil penalty and the nature of the intended order to compel compliance with Iowa Code section 543D.21.
- e.* Notice of the nonlicensee's right to a hearing and the time frame in which hearing has to be requested.
- f.* The address to which a written request for hearing has to be made.

193F—16.4(543D) Request for hearing.

16.4(1) Nonlicensees have to request a hearing within 30 days of the date the notice is received or service is accepted. A request for hearing has to be in writing and is deemed made on the date of the non-metered United States Postal Service postmark or the date of personal delivery to the board office.

16.4(2) If a request for hearing is not timely made, as described in the notice, the board chairperson or the chairperson's designee may issue an order imposing a civil penalty and requiring compliance with Iowa Code chapter 543D. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

16.4(3) If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees. Hearings involving nonlicensees are open to the public.

16.4(4) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 543D at any stage of the proceeding upon mutual consent of the board.

16.4(5) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22.

These rules are intended to implement Iowa Code chapters 17A and 543D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193F—Chapter 26
“Licensure of Persons Licensed in Other Jurisdictions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543D.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:20 to 8:40 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/bfq-qaeb-nwu

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Real Estate Appraiser Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kimberly Gleason, Board Administrator
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.8145
Email: kimberly.gleason@dia.iowa.gov

Purpose and Summary

Proposed Chapter 26 establishes the pathway for those seeking real estate appraiser certification/permits in Iowa with veteran reciprocity, military service, and verification of licensure in another jurisdiction. The benefit of the rulemaking is giving individuals an avenue to provide services to Iowans. The provisions of this chapter related to military service and veteran reciprocity are proposed to be removed because they are now in the general chapters of the Board’s rules.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for costs associated with obtaining licensure. An applicant may incur costs to obtain verification from all states in which the applicant is licensed; this cost should be minimal since states utilize a national registry. The fee for licensure of a certified appraiser is \$280 biennially and may require a background check, which costs \$51.

- Classes of persons that will benefit from the proposed rulemaking:

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that licensees are competent to practice. In addition, this licensure method is not likely to be used by prospective licensees because the standards are nearly equivalent in all jurisdictions. Individuals who wish to engage in federally regulated transaction appraisals must hold an active license in the state in which they are performing work as required by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

For licensure the applicant is required to be licensed and in good standing in another jurisdiction. The educational and qualifying education requirements set by the Appraisal Qualification Board (AQB) would have been completed prior to licensure in the state of Iowa. Those licensed by verification will be required to complete the continuing education requirement set by the AQB; the average cost of the 28 hours of continuing education was found to be around \$535 per renewal. Licensing and renewal fees are \$280.

- Qualitative description of impact:

Establishing minimum requirements for licensure by verification aims to ensure safety for the licensee and consumer. The requirements set by FIRREA make this licensure option nearly equal to license by reciprocity.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which includes managing applications for initial licenses, temporary practice permits, renewals, and reinstatements. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues. This Board has not had a licensure by verification to date but is prepared to issue within federal and state guidelines should an applicant utilize this pathway.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa currently follows the minimum standards for licensure and temporary practice permits set by FIRREA.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Iowa currently follows the minimum standards for licensure set by the Appraisal Foundation (TAF). TAF sets the congressionally authorized standards and qualifications for this profession.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No other alternate method was considered by the agency because the regulations are set by TAF in accordance with federal law. The Board considered merging this chapter into the reciprocity chapter but felt this could cause confusion.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board believes all current requirements assure public safety and ensure minimum competency of care is provided to Iowans. In addition, the Board follows the minimum standards set by the AQB criteria.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking is meant to ensure public safety in terms of licensing requirements for appraisers. The rulemaking allows for an alternative pathway to licensure, making it easier for individuals who already are licensed in other states to practice in Iowa. While some appraisers likely are running a small business of their own, some also work for large firms. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193F—Chapter 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26

LICENSURE OF PERSONS LICENSED IN OTHER JURISDICTIONS

193F—26.1(272C) Definitions.

“*Issuing jurisdiction*” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

“*License*” or “*licensure*” means any license that may be granted by the board.

193F—26.2(272C) Licensure of persons licensed in other jurisdictions.

26.2(1) An individual who establishes residency in this state or who is married to an active duty member of the military forces of the United States and who is accompanying the member on an official permanent change of station to a military installation located in this state may apply for licensure under this rule on forms provided by the board. A certification or registration will be issued if all of the following conditions are met:

a. The person is currently licensed, certified, or registered by at least one other issuing jurisdiction in the profession or occupation applied for with a substantially similar scope of practice and is in good standing in all issuing jurisdictions in which the person holds a license, certificate, or registration. A license, certificate, or registration issued by another jurisdiction that is classified as a licensed residential real property credential or with a scope of practice of a licensed residential real property appraiser, as defined by the AQB criteria, other applicable federal law, rule, or policy, will not be considered a profession or occupation with a substantially similar scope of practice as it relates to a certification or registration as an associate real property appraiser, certified residential real property appraiser, or a certified general real property appraiser.

b. The person has been licensed, certified, or registered by the other issuing jurisdiction forming the basis of the application.

c. When the person was licensed by the other issuing jurisdiction forming the basis of the application, the issuing jurisdiction imposed minimum educational and experience obligations, and the

issuing jurisdiction verifies that the person met those obligations in order to be licensed in that issuing jurisdiction. Generally, given federal mandates, the minimum educational and experience obligations to become certified as a real estate appraiser are substantially the same nationwide within the applicable classification and scope of practice.

d. The person previously passed an AQB-approved examination by the other issuing jurisdiction for licensure, certification, or registration.

e. The person has not had a license, certificate, or registration revoked and has not voluntarily surrendered a license, certificate, or registration in any other issuing jurisdiction or country while under investigation for unprofessional conduct.

f. The person has not had discipline imposed by any other regulating entity in this state or another issuing jurisdiction or country. If another jurisdiction has taken disciplinary action against the person, the appropriate licensing board shall determine if the cause for the action was corrected and the matter resolved. If the licensing board determines that the matter has not been resolved by the jurisdiction imposing discipline, the licensing board will not issue or deny a license, certificate, or registration to the person until the matter is resolved.

g. The person does not have a complaint, allegation, or investigation pending before any regulating entity in another issuing jurisdiction or country that relates to unprofessional conduct. If the person has any complaints, allegations, or investigations pending, the appropriate licensing board shall not issue or deny a license, certificate, or registration to the person until the complaint, allegation, or investigation is resolved.

h. The person pays all applicable fees. The fees for applying for licensure under this rule will be the same as the fees for reciprocal licensure.

i. The person does not have a criminal history that would prevent the person from holding the license applied for in this state.

26.2(2) An individual applying for licensure under this rule will provide, as applicable, proof of current residency in the state of Iowa or proof of the military member's official permanent change of station to the state of Iowa.

a. Proof of residency may include, by way of example:

- (1) Residential mortgage, lease, or rental agreement;
- (2) Utility bill;
- (3) Bank statement;
- (4) Paycheck or pay stub;
- (5) Property tax statement;
- (6) A federal or state government document; or
- (7) Any other document that reliably confirms Iowa residency.

b. Proof of permanent change of station to the state of Iowa includes documentation issued by the appropriate branch of the military requiring a permanent change of station or otherwise indicating or demonstrating a permanent change of station has occurred.

26.2(3) In order to be considered a sufficient application, an application for licensure under this rule must include all appropriate information as required by this rule and, if applicable, the submission of fingerprints and an appropriate authorization of release as may be necessary to facilitate the board's completion of a criminal history check and any corresponding fee.

26.2(4) A person issued a license under this rule is subject to the jurisdiction of the board.

26.2(5) An applicant who is aggrieved by the board's decision to deny an application for a license under this rule may request a contested case hearing. A request for such a contested case hearing will be granted only if the board receives the request within 30 days of issuance of the board's decision.

These rules are intended to implement Iowa Code chapters 543D and 272C and 2019 Iowa Acts, House File 288.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 1
“Administration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

These proposed rules provide Iowans and licensees and their employers with relevant information on the practice of real estate, requirements prior to licensure, requirements after licensure and making sure licensees are held to a higher standard to protect the public from harm. This proposed chapter articulates practice standards and provides a scope of practice for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
This proposed chapter provides administrative background for the Real Estate Commission. No costs are imposed by this chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
Licensees, future licensees, and the general public will benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
No economic impact is imposed by this rulemaking.
 - Qualitative description of impact:
The proposed chapter makes professional licensing more accessible and provides a larger pool of licensees for Iowans to choose from when seeking services.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which includes managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits include less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost from this proposed rulemaking. The Commission is taking the less intrusive route by removing the restrictive language from the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None in this proposed chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no alternative methods that were rejected by the Commission for this proposed chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated from this proposed chapter.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1 ADMINISTRATION

193E—1.1(543B) Mission of the commission. The mission of the Iowa real estate commission is to protect the public through the examination, licensing, and regulation of real estate brokers, salespersons, and firms pursuant to Iowa Code chapter 543B, Real Estate Brokers and Salespersons; to administer Iowa

Code chapter 543C, Sales of Subdivided Land Outside of Iowa; and to administer Iowa Code chapter 557A, Time-Shares.

The commission is a policy-making body with authority to promulgate rules for the regulation of the real estate industry consistent with all applicable statutes. Administrative support services are furnished by the professional licensing and regulation division of the department of inspections, appeals, and licensing. The commission or duly authorized representative may inspect subdivided land outside of Iowa pursuant to Iowa Code section 543C.4.

193E—1.2(543B) Correspondence and communications. Correspondence and communications with the commission should be addressed or directed to the commission office.

193E—1.3(543B) Meetings of the commission. Meetings of the commission are held at times scheduled by the commission in the offices of the commission or at a place designated by the commission. Special meetings may be called by the chairperson or executive officer of the commission, who sets the time and place of the meeting.

193E—1.4(543B) Custodian of records, filings, and requests for public information. Unless otherwise specified by the rules of the department of inspections, appeals, and licensing or the professional licensing and regulation division, the commission is the principal custodian of its own agency orders, statements of law or policy issued by the commission, legal documents, and other public documents on file with the commission.

1.4(1) Any person may examine public records promulgated or maintained by the commission at its office during regular business hours.

1.4(2) Records, documents and other information may be gathered, stored, and available in electronic format. Information, various forms, documents, and the license law and rules may be reviewed or obtained at any time by the public from the commission's website.

1.4(3) Deadlines. Unless the context dictates otherwise, any deadline for filing a document that falls on a Saturday, Sunday, or official state holiday will be extended to the next working day.

193E—1.5(543B) Investigation and subpoena. Commission rules regarding investigations and investigatory subpoenas may be found in 193E—Chapter 18 and in the uniform rules for the professional licensing and regulation division at 193—Chapter 6.

193E—1.6(543B) Impaired licensee review committees. Commission rules governing impaired licensee review committees may be found in the uniform rules for the professional licensing and regulation division at 193—Chapter 12.

These rules are intended to implement Iowa Code chapters 17A, 252J, 261, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 2
“Definitions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter provides Iowans and licensees and their employers with definitions relevant to the practice of real estate. These proposed rules articulate practice standards and provide a scope of practice for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed chapter provides administrative background for the Real Estate Commission (Commission). No costs are imposed by this chapter. There are costs associated with standards of practice since there is often time, effort and money associated with compliance.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees, future licensees, and the general public. The general public and licensees benefit from this proposed rulemaking. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

No economic impact is imposed by this proposed rule. The Commission believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Commission.

- Qualitative description of impact:

Establishing practice standards, including definitions, ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean lower-skilled individuals providing services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which includes managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

There is no anticipated impact on changes from this proposed chapter on state revenues.

Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefit is less restrictive language and consolidation of chapters, which simplifies rules and provides better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None in this proposed chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no alternative methods that were rejected by the Commission for this proposed chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rule relates to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The rule is meant to ensure public safety in terms of practice standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
DEFINITIONS

193E—2.1(543B) Definitions.

“*Additional license*” means any officer or partner license(s) issued based upon and dependent or contingent upon the primary or main officer or partner license, but assigned to a different corporation or partnership.

“*Advance fees*” means any fees charged for services to be paid in advance of the rendering of such services including, without limitation, any fees charged for listing, advertising, or offering for sale or lease any real property, but excluding any fees paid solely for advertisement in a newspaper of general circulation.

“*Affiliated licensee*” means a broker associate or salesperson, as defined in Iowa Code sections 543B.5(5) and 543B.5(19), who is under the supervision of a broker.

“*Applicant*” means a person who has applied for or intends to apply for a real estate salesperson or real estate broker license.

“*Application form*” means the form furnished by the commission to be completed and submitted to apply for an original license as a real estate salesperson, real estate broker, real estate firm or trade name.

“*Branch office license*” means the same as “duplicate license” as used in Iowa Code section 543B.31.

“*Broker*” means any person holding an Iowa real estate broker license as defined in Iowa Code section 543B.3.

“*Brokerage agreement*” means the same as defined in Iowa Code section 543B.5(7).

“*Broker associate*” means the same as defined in Iowa Code section 543B.5(5).

“*Buyer*” includes a purchaser, tenant, vendee, lessee, party to an exchange, or grantee of an option. Selected rules in these chapters will at times refer separately to “buyers” and “tenants” to clarify licensees’ duties and obligations.

“*Client*” means the same as defined in Iowa Code section 543B.5(9).

“*Commission*” means the real estate commission.

“*Common source information companies*” means any individual, corporation, limited liability company, business trust, estate, trust, partnership, association, or any other legal entity (except any government or governmental subdivision or agency, or any officer or employee thereof acting in such individual’s official capacity) that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

“*Completed application*” means an original or renewal application timely received with all necessary information, documents, signatures, fees or penalties.

“*Confidential information*” means information made confidential by statute, regulation, or express instructions from the client. Confidential information does not include “material adverse facts” as defined in Iowa Code section 543B.5(14). Confidential information includes, but is not limited to, the following:

1. Information concerning the client that, if disclosed to the other party, could place the client at a disadvantage when bargaining;
2. That the seller or landlord is willing to accept less than the asking price or lease price for the property;
3. That the buyer or tenant is willing to pay more than the asking price or lease price for the property;
4. The motivating factors for the party selling or leasing the property;
5. The motivating factors for the party buying or leasing the property;

6. That the seller or landlord will agree to sale, lease, or financing terms other than those offered;
7. That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;
8. The seller's or landlord's real estate needs;
9. The buyer's or tenant's real estate needs;
10. The seller's or landlord's financial information, except that the seller's ability to sell and the landlord's ability to lease are considered a material fact;
11. The buyer's or tenant's financial qualifications, except that the buyer's ability to buy and the tenant's ability to lease are considered a material fact.

Confidential information is not disclosable unless one of the following applies:

1. The client to whom the information pertains provides informed written consent to disclose the information;
2. The disclosure is mandated by statute or regulation, or failure to disclose the information would constitute fraudulent representation;
3. The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee; or
4. The disclosure is necessary to defend the licensee against an accusation of wrongful conduct in an actual or threatened judicial proceeding, an administrative proceeding before the commission, or in a proceeding before a professional committee.

"Consumer" means a person seeking or receiving real estate brokerage services.

"Contract between the buyer and seller" means an offer to purchase, a sales contract, an option, a lease-purchase option, an offer to lease, or a lease.

"Conviction" means the same as defined in Iowa Code section 543B.15(3).

"Customer" means a consumer of real estate services in connection with a real estate transaction who is not being represented by the licensee, but for whom the licensee may perform ministerial acts. A customer may be a client of another broker, may have yet to decide whether or not to be represented by any broker, or may have chosen not to be represented by any broker.

"Designated broker" means the broker or broker associate designated as the person in charge of and responsible for supervision of a main office or branch office as defined in Iowa Code section 543B.5(11).

"Dual agent" means a licensee who, with the written informed consent of all the parties to a contemplated real estate transaction, has entered into a brokerage agreement with and therefore represents the seller and buyer or both the landlord and tenant in the same in-house transaction.

"Duplicate license" or *"replacement license"* means a license reissued for the remainder of a license term, at the written request of the broker, to replace a lost or destroyed license.

"Electronic format" means a record generated, communicated, received, or stored by electronic means, and is in a format that has the continued capability to be retrieved and legibly printed upon request.

"Examination" means a licensure examination necessary before issuance of a license.

"Examinee" means a person who has registered or intends to register to take a licensure examination.

"Filed" means that documents or application and fees are considered filed with the commission on the date postmarked, not the date metered, or on the date personally delivered to the commission office.

"Firm" means a licensed partnership, association, limited liability company, or corporation.

"Licensee" means the same as defined in Iowa Code section 543B.5(13).

"Listing broker" means the real estate broker who obtains a listing of real estate or of an interest in a residential cooperative housing corporation.

"Ministerial acts" means those acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of specific assistance on behalf of a consumer. For purposes of these rules, ministerial acts include, but are not limited to, the following:

1. Responding to general telephone inquiries by consumers as to the availability and pricing of brokerage services;
2. Responding to general telephone inquiries from a consumer concerning the price, facts and features, or location of property;

3. Attending an open house and responding to general questions from a consumer about the facts and features of the property;
4. Setting an appointment to view property;
5. Responding to general questions of consumers walking into a licensee's office concerning brokerage services offered or the facts and features of particular properties;
6. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
7. Describing the facts and features of a property or the property's condition in response to a consumer's inquiry;
8. Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;
9. Showing a client through a property being sold by an owner; or
10. Referring a person to another broker or service provider.

"Moral turpitude" means an act of baseness, vileness, or depravity, in the private and social duties which a person owes to another person or to society in general, contrary to the accepted and customary rule of right and duty between person and person. It is conduct that is contrary to justice, honesty and good morals. Various factors may cause an offense which is generally not regarded as constituting moral turpitude to be regarded as such. A crime of moral turpitude as specified in Iowa Code section 543B.15(3) shall include without limitation forcible felonies as delineated in Iowa Code section 702.11.

"Original license" means the license of a salesperson, broker, or firm that covers the first term of licensure in Iowa. A license applied for and reissued after the final deadline for renewal of a license is also an original license.

"Primary license" or *"main license"* means the original license issued based upon examination, including any subsequent renewals or reinstatements of the license. Continuing education is necessary to renew to active status.

"Principal broker" means a broker who is either a real estate proprietor, a partner in a real estate partnership, or an officer in a real estate corporation.

"Renewal application form" means the form furnished by the commission to be completed and submitted to apply for renewal of a license as a real estate salesperson, real estate broker, real estate firm, branch office or trade name.

"Salesperson" means any person holding an Iowa real estate salesperson license as defined in Iowa Code section 543B.5(19).

"Seller" includes an owner, landlord, vendor, lessor, party to an exchange, or grantor of an option. Selected rules in these chapters will at times refer separately to "sellers" and "landlords" to clarify licensees' duties and obligations.

"Selling broker" means a real estate broker who finds and obtains a buyer in a transaction.

"Single agent" means a licensee who represents only one party in a real estate transaction. A single agent includes a broker and any affiliated broker associates or salespersons representing a party exclusively or nonexclusively, regardless of whether the single agent be all affiliated broker associates or salespersons, or only the identified broker associates or salespersons, or a group of identified broker associates or salespersons. A single agent may be one of the following:

1. "Seller's agent" which means a licensee who represents the seller in a real estate transaction;
 2. "Landlord's agent" which means a licensee who represents the landlord in a leasing transaction;
 3. "Buyer's agent" which means a licensee who represents the buyer in a real estate transaction;
- and
4. "Tenant's agent" which means a licensee who represents the tenant in a leasing transaction.

"Sole-proprietor broker" means an individual or single license broker who privately owns and manages a real estate company.

"Specific assistance" means any communication beyond casual conversation concerning the facts and features of a property which occurs prior to the point of discussing price range or any specific, financial qualifications of the buyer or tenant, or selling or buying motives or objectives of the seller or buyer, or tenant or landlord, or eliciting or accepting information involving a proposed or preliminary offer associated with a specific property, in which the person may unknowingly divulge any confidential

personal or financial information, which, if disclosed to the other party, could harm the party's bargaining position. For the purposes of these rules, "specific assistance" does not include preliminary conversations or "small talk" concerning location and property styles, or responses to general factual questions from a potential buyer or tenant concerning facts and features of properties which have been advertised for sale or lease.

"Status" means the condition of a real estate license. A license may be active, inactive, expired, suspended, revoked or canceled. "Inactive license" is defined in Iowa Code section 543B.5(12).

"Subagent" means a broker and a broker's affiliated licensees, engaged by another broker to act as an agent for a client. The subagent has the same obligations and responsibilities to the client as the primary broker representing the client.

"Third party" means a person or entity that is not a client, is not a party to the transaction, and has no agency relationship to a real estate brokerage.

"Timely" means done or occurring at a reasonable time under the circumstances.

"Timely received" means postmarked, not metered, not later than midnight on the last date of the deadline specified by the Iowa Code or commission rules.

"Transaction" means the sale, exchange, purchase, or rental of, or the granting or acceptance of, an option to sell, exchange, purchase, or rent an interest in real estate, but excluding the subleasing of an interest in a residential cooperative housing corporation, when the leases are for one year or less.

"Type" means the category to which a broker license or firm license is issued. A broker license may be issued as a sole-proprietor broker, broker officer, broker partner, or broker associate. A firm license may be issued as a corporation, partnership or association.

"Undisclosed dual agent" means a licensee representing two or more clients in the same transaction whose interests are adverse without the knowledge and informed consent of the clients.

This rule is intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 3
“Broker License”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter sets minimum standards for entry into the real estate profession. Iowa residents and licensees and employers will benefit from these rules since the rules articulate the processes by which individuals apply for licensure as a real estate licensee in the state of Iowa, as directed in statute, which includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The cost of licensure is paid by applicants and licensees. Future and current licensees are responsible for the cost of their education, examinations, and background checks. Private industry offers educational courses, so the Real Estate Commission (Commission) is not privy to the exact costs, but research estimates the costs to be around \$500 to \$700 for initial licensure and \$500 for the cost of continuing education every three years to meet requirements. There are multiple entities that provide education. Examinations and background checks are a set price.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees, future licensees, and the general public. Establishing minimum licensing requirements ensures that licensees are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public during their practice.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

No new fees are being imposed, and no economic impact is imposed by the proposed revisions. The education for licensees is provided by private industries, including educational institutions, professional associations, and businesses. The Commission is not able to give exact costs.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time needed to manage Commission activities, which includes managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board or commission.

- Anticipated effect on state revenues:

Costs associated with implementing these proposed rules are paid by individual licensees or establishments, not the State. There is no anticipated impact from this rulemaking on state revenues.

Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards and commissions.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Commission believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Commission would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of real estate licensees in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking a less intrusive route by removing the restrictive language in the proposed chapter. The Commission could reduce the number of hours of required education to reduce the cost to licensees. This was considered, but it is not something the Commission wishes to do at this time.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with the Commission regarding the reduction of education to include continuing education hours; however, the Commission considered the amount of complaints, and the protection of the public outweighs reducing education hours.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Commission did propose less restrictive alternatives, such as reducing the number of continuing education hours. The Commission believes that eliminating education hours would increase the number of complaints and investigations the Commission would need to conduct. The Commission has not been able to analyze this correlation, so it is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Real estate licensees practice in a number of settings, including small businesses, self-employment, corporations and large agencies. The cost of prelicensing and continuing education could be greater for small business owners since they would be responsible for the entire cost. If individual licensees found a requirement to be overly burdensome, the licensee could utilize the established waiver process to request a waiver from the requirement.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
BROKER LICENSE

193E—3.1(543B) Broker licensure. An applicant is only eligible for a broker license by satisfying Iowa Code section 543B.15.

3.1(1) An applicant for a real estate broker's license who has been convicted of a disqualifying criminal offense in a court of competent jurisdiction in this state or in any other state, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction as provided by Iowa Code section 272C.15 and rule 193—15.2(272C).

3.1(2) An applicant for a broker license may use active experience as a former Iowa salesperson or active salesperson experience in another state or jurisdiction, or a combination of both, to satisfy the experience requirement for a broker license under Iowa Code section 543B.15(7) only if the former Iowa salesperson or applicant from another state or jurisdiction was actively licensed for not less than 24 months and if the license on which the experience is based has not been expired for more than three years prior to the date the completed broker application with fee is filed with the commission.

193E—3.2(543B) License examination. Examinations for licensure as a real estate broker are conducted by the commission's authorized representative.

3.2(1) Testing service. The commission will negotiate an agreement with a testing service relating to examination development, test scheduling, examination sites, grade reporting and analysis. The commission approves the form, contract, and method of administration. The examination is conducted in accordance with approved procedures formulated by the testing agency. Applicants register and pay examination fees directly to the testing service.

3.2(2) Requests for waiver. The commission will consider each request for a waiver of commission rules or of the qualifications for licensure on an individual basis. The commission may require additional supporting information. If the applicant's experience or prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the

deficiency. If a waiver is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

3.2(3) Eligibility to sit for examination. An individual may only sit for the examination after meeting the qualifications set out in Iowa Code section 543B.15. An examinee is obligated to show one of the following at the examination site:

- a. Evidence that prelicense education has been completed within the last two years.
- b. The letter from the commission granting a waiver of prelicense education.
- c. A written authorization from the commission for individuals planning to qualify under rule 193E—5.3(543B) or 193E—5.12(543B).
- d. A written authorization from the commission for individuals planning to seek reinstatement of an expired license.

3.2(4) Failure to pass examination. An examinee who takes an examination and fails is eligible to apply to retake the examination at any time the examination is offered by filing a new registration form and paying the examination fee, unless the qualifying time period for the prelicense education or granted waiver has expired.

193E—3.3(543B) Application for broker license. An applicant who applies for a broker's license will submit to the commission a completed application, license fee, proof of required education, and test score reports not later than the last working day of the sixth calendar month following the qualifying real estate examination. As required by Iowa Code section 543B.15(9), the completed application must be received within 210 calendar days of the completion of the criminal history check.

3.3(1) Application contents. The applicant for licensure attests to the accuracy of the detailed personal, financial, and business information concerning the applicant included on the application.

3.3(2) License terms. Real estate broker, salesperson, trade name, branch office, and firm licenses are issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term. Branch office licenses and trade name licenses are issued for the remaining portion of the license term of the license to which each is assigned.

3.3(3) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application does not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

193E—3.4(543B) Broker continuing education.

3.4(1) To renew a license in active status, each broker or broker associate completes a minimum of 36 hours of approved programs, courses or activities. The continuing education is completed during the three calendar years of the license term and cannot be carried over to another license term.

3.4(2) Brokers and broker associates complete approved courses in the following subjects to renew to active status, except in accordance with 193E—Chapter 16.

| | |
|------------|----------|
| Law Update | 8 hours |
| Ethics | 4 hours |
| Electives | 24 hours |

3.4(3) A license may be renewed in inactive status without the completion of continuing education. Prior to reactivating a license which has been issued inactive due to the licensee's failure to submit evidence of continuing education, the licensee submits an application to reactivate to active status with evidence that all deficient continuing education hours have been completed. The maximum continuing education hours will not exceed the prescribed number of hours of one license renewal period and are completed during the three calendar years preceding activation of the license.

193E—3.5(17A,272C,543B) Renewing a broker license. To remain authorized to act as a real estate broker, a broker renews a real estate license before the expiration date of the license. Brokers who fail to renew a real estate license before expiration are not authorized to practice as real estate brokers in Iowa.

Termination of a broker's authority to practice real estate in Iowa automatically terminates the authority of all salespersons employed by or assigned to the broker.

3.5(1) *Application forms.* Applications for renewal of a broker's license may be found on the commission's website. Brokers renew electronically. While the commission generally mails reminders to brokers in the November preceding license expiration, the failure of the commission to mail a reminder does not excuse the broker from the requirement to renew prior to the expiration of the license.

3.5(2) *Qualifications for renewal.* The commission grants an application to renew a broker's license if:

a. The application is timely received by the commission by December 31, or within the 30-day grace period after expiration as provided by Iowa Code section 543B.28.

b. The application is accompanied by the regular renewal fee and, if received by the commission after midnight December 31 but prior to midnight January 30, is accompanied by a penalty of \$25.

c. The application is fully completed with all necessary information, including proper disclosure of completed continuing education and errors and omissions insurance.

d. The application does not include grounds to deny a license, such as the revocation of a license in another jurisdiction or a criminal conviction.

3.5(3) *Incomplete or untimely applications to renew.* Renewal applications received by the commission after midnight January 30 will be treated as applications to reinstate an expired license under rule 193E—3.6(272C,543B).

a. Applications to renew or reinstate a broker's license which are incomplete or which are not accompanied by the proper fee may be returned to the broker for additional information or fee.

b. Alternatively, the commission may retain the application, and notify the applicant that the application cannot be granted without further information or fee.

3.5(4) *Insufficient continuing education.* Renewal applications which do not report completion of required continuing education, but which are otherwise timely and sufficient and accompanied with the proper fee, are renewed in inactive status. In the event of a factual dispute regarding the broker's intent to renew in inactive status or a broker's completion of continuing education, the commission may deny the application and provide the applicant with an opportunity for hearing according to the procedures set forth in rule 193—7.39(546,272C).

3.5(5) *Denial of application to renew.* An application to renew may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application to renew does not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

3.5(6) *Renewal of inactive or suspended license.* An inactive or suspended license expires if not timely renewed. The status of a license does not affect the requirement to renew.

193E—3.6(272C,543B) Reinstatement of an expired broker license. A real estate broker who fails to renew or file a completed renewal application by midnight January 30 of the first year following expiration may reinstate the license within three years of expiration by submitting a complete and sufficient application accompanied by the regular renewal fee and an additional reinstatement fee of \$25 for each partial or full month following expiration. From the date of expiration to the date of reinstatement, the broker is not authorized to practice as a real estate broker in Iowa.

3.6(1) *Continuing education.* A broker either fully satisfied all continuing education or has retaken and passed the broker examination to reinstate an expired broker license.

3.6(2) *Starting over.* A broker who fails to reinstate an expired license by December 31 of the third year following expiration is treated as if the former broker had never been licensed in Iowa. Such a former broker starts over in the licensing process and must first qualify and apply for a salesperson license.

3.6(3) *Denial of application.* An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application does not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 4
“Salesperson License”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter sets minimum standards for entry into the real estate profession as a salesperson. Iowa residents and licensees and employers benefit from the rules since the rules articulate the processes by which individuals apply for licensure as a real estate licensee in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The cost of licensure will impact the applicants and licensees. Future and current licensees are responsible for the cost of their education, exams, and background checks. Private industry offers these courses, so the Real Estate Commission is not privy to the exact costs, but research estimates the costs to be around \$500 to \$700 for initial licensure and \$500 for the cost of continuing education every three years to meet requirements. There are multiple entities that provide education. Costs of examinations and background checks are a set price.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees, future licensees, and the general public will benefit. Establishing minimum licensing requirements ensures that licensees are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public during their practice.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

No new fees are being imposed, and no economic impact is imposed by the rule changes. The education for licensees is provided by private industries, including educational institutions, professional associations, and businesses. The Commission is not able to give exact costs.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board or commission.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual licensees or establishments, not the State. There is no anticipated impact from this proposed rulemaking on state revenues.

Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards and commissions.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Commission believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Commission would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure of real estate licensees in other states, which makes obtaining licensure in multiple states simpler for applicants.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking a less intrusive route by removing the restrictive language in the chapter. The Commission could reduce the number of hours of required education to reduce the cost to licensees. Some surrounding states, such as Nebraska, require real estate licensees to renew their licenses every two years with 18 hours of continuing education units (CEUs). The Commission did not want to lower its CEU requirements because the Commission receives 300 to 400 complaints per year. The Commission believes that the education requirements are already low enough, and the Commission is not willing to reduce the number of hours at this time. If the Commission were to start seeing fewer complaints, it might be something the Commission would reconsider in the future. As for right now, the Commission believes the education requirements are an important factor in protecting the public.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff held conversations with the Commission regarding the reduction of education requirements to include continuing education hours; however, the Commission considered the amount of complaints and determined that the protection of the public outweighs reducing education hours.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Commission did propose less restrictive alternatives, such as reducing the number of continuing education hours. The Commission believes that eliminating education hours would increase the number of complaints and investigations the Commission would need to conduct. The Commission has not been able to analyze this correlation, so it is unable to submit evidence of this belief.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Real estate licensees practice in a number of settings, including small businesses, self-employment, corporations and large agencies. The cost of pre-licensing and continuing education could be greater for small business owners since they would be responsible for the entire cost. If an individual licensee found a requirement to be overly burdensome, the licensee could utilize the established waiver process to request a waiver from the requirement.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4 SALESPERSON LICENSE

193E—4.1(543B) General criteria for salesperson license. A person who is licensed under and employed by or otherwise associated with a real estate broker or firm is a “salesperson” as defined in Iowa Code section 543B.5(20) and rule 193E—2.1(543B).

4.1(1) An original application for a salesperson license cannot be issued to inactive status.

4.1(2) If the license is transferred, as provided in rule 193E—6.2(543B), the salesperson may work immediately for the new broker.

4.1(3) A salesperson is assigned to a licensed broker or firm and cannot conduct business independently.

4.1(4) Except as provided in Iowa Code section 543B.21, an applicant for a salesperson license must meet all qualifications under Iowa Code section 543B.15.

4.1(5) An applicant for a real estate salesperson license who has been convicted of a disqualifying criminal offense in a court of competent jurisdiction in this state or in any other state, jurisdiction, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction as provided by Iowa Code section 272C.15 and rule 193—15.2(272C).

4.1(6) An applicant for a real estate salesperson license who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation.

4.1(7) Salesperson prelicense education requirements. As required by Iowa Code section 543B.15(8) and 193E—Chapter 16, the required course of study for the salesperson licensing examination consists of 60 live instruction or online learning hours of real estate principles and practices. To be eligible to take the examination, the 60 live education or online learning hours of real estate principles and practices are completed during the 12 months prior to taking the examination. The applicant will also provide evidence of successful completion of the following courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. The prelicense education will expire after 12 months.

193E—4.2(543B) License examination. Examinations for licensure as a real estate salesperson are conducted by the commission or its authorized representative.

4.2(1) Testing service. The commission will negotiate an agreement with a testing service relating to examination development, test scheduling, examination sites, grade reporting and analysis. The commission will approve the form, contract, and method of administration. The examination is conducted in accordance with approved procedures formulated by the testing service. Applicants register and pay examination fees directly to the testing service.

4.2(2) Requests for waiver. The commission will consider each request for a waiver of commission rules or of the qualifications for licensure on an individual basis. The commission may require additional supporting information. If the applicant's prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a waiver is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

4.2(3) Eligibility to sit for examination. An individual may only sit for the exam after meeting the qualifications set out in Iowa Code section 543B.15. An examinee is obligated to show one of the following at the examination site:

- a. Evidence that 60 live education or online learning hours of real estate principles and practices have been completed.
- b. A letter from the commission granting a waiver of prelicense education.
- c. A written authorization from the commission for individuals planning to qualify under rule 193E—5.3(543B) or 193E—5.12(543B).

4.2(4) Failure to pass examination. An examinee who takes an examination and fails is eligible to apply to retake the examination at any time the examination is offered by filing a new registration form and paying the examination fee, unless the qualifying time period for the prelicense education or waiver granted has expired.

193E—4.3(543B) Application for salesperson license. An applicant who passes a qualifying examination and applies for a license must file with the commission a completed application with license fee, proof of required education, and test score report not later than the last working day of the sixth calendar month following the qualifying real estate examination. As required by Iowa Code section 543B.15(9), the completed application must be received within 210 calendar days of the completion of the criminal history check.

4.3(1) Application contents. The application includes detailed personal, financial, and business information concerning the applicant, and the applicant for licensure attests to its accuracy.

4.3(2) License terms. A salesperson license is issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term.

4.3(3) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application does not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

193E—4.4(543B) Salesperson continuing education requirements.

4.4(1) As a requirement of license renewal in active status, each salesperson completes a minimum of 36 hours of approved programs, courses or activities during the three calendar years of the license term, and continuing education hours cannot be carried over to another license term.

4.4(2) Salespersons renewing licenses shall complete approved courses in the following subjects to renew to active status, except in accordance with 193E—Chapter 16.

| | |
|------------------|----------|
| Law Update | 8 hours |
| Ethics | 4 hours |
| Electives | 24 hours |

4.4(3) A salesperson license may be renewed to inactive status without completion of continuing education. Prior to reactivating a license which has been issued inactive due to failure to submit evidence of continuing education, the licensee must submit evidence that all deficient continuing education hours have been completed. The maximum continuing education hours shall not exceed the prescribed number of hours of one license renewal period and must be completed during the three calendar years preceding activation of the license.

193E—4.5(543B) Renewing a license. To remain authorized to act as a real estate salesperson, a salesperson must renew a real estate license before the expiration date of the license. Salespersons who fail to renew a real estate license before expiration are not authorized to practice as real estate salespersons in Iowa.

4.5(1) Application forms. Applications for renewal of a salesperson license may be found on the commission’s website. Salespersons will renew electronically. While the commission generally mails reminders to salespersons in the November preceding license expiration, the failure of the commission to mail a reminder does not excuse the salesperson from the requirement to timely renew.

4.5(2) Qualifications for renewal. The commission shall grant an application to renew a salesperson license if:

- a. The application is timely received by the commission by December 31, or within the 30-day grace period after expiration as provided by Iowa Code section 543B.28.
- b. The application is accompanied by the regular renewal fee and, if received by the commission after midnight December 31, but prior to midnight January 30, is accompanied by a penalty of \$25.
- c. The application is fully completed with all necessary information, including proper disclosure of required continuing education and errors and omissions insurance.
- d. The application fails to reveal grounds to deny a license, such as a criminal conviction or the revocation of a license in another jurisdiction.

4.5(3) Incomplete or untimely applications to renew. Renewal applications received by the commission, or postmarked, after midnight January 30 shall be treated as applications to reinstate an expired license under rule 193E—4.6(272C,543B).

- a. Applications to renew or reinstate a salesperson license which are incomplete or which are not accompanied by the proper fee may be returned to the salesperson for additional information or fee.
- b. Alternatively, the commission may retain the application and notify the applicant that the application cannot be granted without further information or fee.

4.5(4) Insufficient continuing education. Renewal applications which do not report completion of required continuing education, but which are otherwise timely and sufficient and accompanied with proper fee, shall be renewed in inactive status. In the event of a factual dispute regarding the salesperson’s intent to renew in inactive status or a salesperson’s compliance with continuing education requirements, the commission may deny the application and provide the applicant with an opportunity for hearing according to the procedures set forth in rules 193—7.39(546,272C) and 193E—18.13(543B).

4.5(5) Denial of application to renew. An application to renew may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application to renew shall not prevent the later initiation of a contested case to challenge a licensee’s qualifications for licensure.

4.5(6) *Renewal of inactive or suspended license.* An inactive or suspended license must be timely renewed or it shall expire. The status of a license does not affect the requirement to renew.

193E—4.6(272C,543B) Reinstatement of an expired salesperson license. A real estate salesperson who fails to renew or fails to file a complete renewal application form by midnight January 30 of the first year following expiration may reinstate the license within three years of expiration by submitting a complete and sufficient application accompanied by the regular renewal fee and an additional reinstatement fee of \$25 for each partial or full month following expiration. From the date of expiration to the date of reinstatement, the salesperson is not authorized to practice as a real estate salesperson in Iowa.

4.6(1) *Continuing education.* An application to reinstate an expired salesperson license must report that the salesperson either fully satisfied all required continuing education or has retaken and passed the salesperson examination. A salesperson holding an expired license who wishes to retake the salesperson examination must obtain written authorization from the commission to show at the examination site.

4.6(2) *Deposit of reinstatement fees.* Reinstatement fees collected under this rule shall be transmitted to the treasurer's office and credited to the education fund established in Iowa Code section 543B.54.

4.6(3) *Starting over.* A salesperson who fails to reinstate an expired license by December 31 of the third year following expiration shall be treated as if the former salesperson had never been licensed in Iowa. Such a former salesperson must start over in the licensing process and qualify and apply for a salesperson license.

4.6(4) *Denial of application.* An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 5
“Licensees of Other Jurisdictions and Reciprocity”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter sets minimum standards for entry into the real estate profession from another jurisdiction. Iowa residents and licensees and employers benefit from the rules since the rules articulate the processes by which individuals apply for licensure as a real estate licensee in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and exam requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The cost of licensure will impact the applicants and licensees. This type of licensure does not require initial education since a licensee is using the licensee’s license status in another state. The cost for this type of licensing includes set amounts for examinations and background checks, the costs over which the Real Estate Commission (Commission) has no control. Continuing education is required for certain states but not for full reciprocity states. The continuing education portion is a cost that is offered by private industry, so the Commission is not privy to the cost nor does it have a say in what a private industry can charge. However, multiple entities offer courses that are approved by the Commission, allowing for licensees to make their own choices.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees, future licensees, and the general public. The public and professionals will benefit from the proposed rulemaking. Establishing minimum licensing requirements for other jurisdictions to enter into the state of Iowa ensures that licensees are competent to practice in Iowa. Without having an established

threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

No new fees are being imposed, and no economic impact is imposed by the rule changes. However, private industries, including educational institutions, professional associations, and businesses, offer these courses and/or examinations, so the Commission is not privy to exact costs or changing costs at all times.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time needed to manage Commission activities, which includes managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing these proposed rules are paid by individual licensees or establishments, not the State. There is no anticipated impact from these rules on state revenues.

Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits include less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees. The Commission believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Commission would be concerned about the public safety of Iowans in that scenario. In addition, the proposed rules provide consistency related to the licensure.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking a less intrusive route by removing the restrictive language in the chapter. A review of surrounding states has shown that the Commission's licensing fees are comparable. The Commission did not consider reducing or raising the price of the actual license fee. The cost of the background check and examinations are set amounts set by other entities and not the Commission.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Commission has not identified a more cost-effective alternative to the licensure of real estate licensing. The Commission believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Commission would be concerned about

the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to licensure of real estate agents in other states, which makes obtaining licensure in multiple states simpler for applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Commission believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Commission would be concerned about the public safety of Iowans in that scenario. In addition, the proposed chapter provides consistency related to the licensure of real estate agents in other states, which makes obtaining licensure in multiple states simpler for applicants.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rules are meant to ensure public safety in terms of licensing requirements.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5 LICENSEES OF OTHER JURISDICTIONS AND RECIPROCITY

193E—5.1(543B) Licensees of other jurisdictions. As provided in Iowa Code section 543B.21, a nonresident of this state may be licensed as a real estate broker or a real estate salesperson upon complying with all the provisions and conditions of Iowa Code chapter 543B and commission rules relative to resident brokers or salespersons.

5.1(1) A person licensed in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) or 193E—5.12(543B) may qualify for a salesperson license in Iowa.

5.1(2) A person licensed as a broker or broker associate in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) or 193E—5.12(543B) may qualify for the same type of broker or broker associate license in Iowa. The person meets all criteria for an Iowa broker license as provided in rule 193E—3.1(543B). If the person does not meet the criteria, the person may qualify for a salesperson license if the person meets, at a minimum, the criteria for an Iowa salesperson license as provided in 193E—Chapter 4.

5.1(3) A person may only perform activities in Iowa as provided by Iowa Code chapter 543B after qualifying for and being issued a real estate license.

193E—5.2(543B) Nonresident application. Each applicant under rule 193E—5.3(543B) or under a reciprocal licensing agreement or memorandum applies on forms provided by the commission under Iowa Code section 543B.16. The application includes but is not limited to a certification of license from the state of original licensure containing all information required by Iowa Code section 543B.21 and an affidavit certifying that the applicant has reviewed and is familiar with and will be bound by the Iowa real estate license law and the rules of the commission.

193E—5.3(543B) License by examination. A nonresident applicant licensed as a real estate salesperson or broker in a state or jurisdiction which does not have a reciprocal licensing agreement or memorandum with Iowa, or an applicant who does not qualify for reciprocal licensing, may be issued a comparable Iowa license by passing the real estate examination under the following circumstances:

5.3(1) Broker. The person has been actively licensed as a broker or broker associate, the person meets all criteria for an Iowa broker's license as provided in rule 193E—3.1(543B), and the license has not been inactive or expired for more than six months immediately preceding the date of passage of the national portion and Iowa portion of the broker real estate examination.

5.3(2) Salesperson. The person has been actively licensed as a salesperson and the license has not been inactive or expired for more than six months immediately preceding the date of passage of the Iowa portion of the salesperson real estate examination.

5.3(3) The applicant submits a written request for authorization to sit for the appropriate examination.

5.3(4) The applicant submits certification of the applicant's current qualifying license from the licensing authority that issued the license.

193E—5.4(543B) Licensure by reciprocity. The commission may, as provided in Iowa Code section 543B.21, enter into specific written reciprocal licensing agreements or memorandums with other individual states or jurisdictions having similar licensing criteria and grant an Iowa license to licensees from those states or jurisdictions on the same basis as Iowa licensees are granted licenses by those states or jurisdictions.

5.4(1) The applicant is not a resident of Iowa.

5.4(2) A license issued pursuant to this rule is based upon a nonresident salesperson or broker license issued by examination.

5.4(3) A license issued pursuant to this rule is assigned to the same broker or firm as the nonresident license upon which it is based.

5.4(4) If an applicant establishes residency in Iowa, that person does not qualify for licensure by reciprocal licensing agreement or memorandum.

5.4(5) An Iowa license issued by reciprocity is based upon the nonresident license issued by examination in that other state or jurisdiction and is issued to the same broker and location as the nonresident license. The nonresident broker and firm, if applicable, must also be licensed in Iowa.

5.4(6) A reciprocity agreement or memorandum of understanding is only a method to apply for licensure and does not grant any exception to mandatory license laws of Iowa or the other state or jurisdiction.

5.4(7) An Iowa licensee wishing to obtain a license in any other state or jurisdiction should contact that state's or jurisdiction's licensing board for information and applications.

193E—5.5(543B) Renewal of a license issued by reciprocity. All renewal criteria for a real estate broker or salesperson license issued by examination apply to a license issued by reciprocity.

Continuing education reciprocity is specifically provided for in the reciprocal license agreement or memorandum, or in a separate reciprocal continuing education agreement or memorandum.

193E—5.6(543B) Reinstatement of a license issued by reciprocity. All reinstatement criteria for a real estate broker license or salesperson license issued by examination apply to a license issued by reciprocity.

5.6(1) Starting over. A broker or salesperson who fails to file a complete application to reinstate an expired license by midnight December 31 of the third year following expiration is treated as if the former broker or salesperson had never been licensed in Iowa.

5.6(2) A broker or salesperson must qualify for reciprocity in order to reinstate an expired reciprocal broker or salesperson license.

5.6(3) If the broker or salesperson has moved into Iowa and no longer qualifies for reciprocity, the expired license is reinstated in the same manner as a license issued by examination as provided in rule 193E—3.6(272C,543B) for brokers and rule 193E—4.6(272C,543B) for salespersons.

193E—5.7(543B) Nonresident real estate offices and licenses required. All nonresident applicants for licensure in Iowa shall qualify for and obtain a license pursuant to Iowa Code section 543B.2(2) and rule 193E—7.1(543B).

5.7(1) If the applicant is a broker associate or salesperson of a nonresident broker, the nonresident employing broker must have an Iowa broker license.

5.7(2) If the applicant is employed by or otherwise associated with a nonresident real estate firm as defined in rule 193E—2.1(543B), that firm must apply and qualify for an Iowa license.

a. No firm as defined in rule 193E—2.1(543B) may be granted an Iowa license unless at least one member or officer of the firm applies for and is granted an Iowa broker license.

b. Every member or officer of the firm and every employee or associated real estate licensee who acts as a real estate broker, broker associate, or salesperson in Iowa must apply for and be granted an Iowa license.

5.7(3) As provided by Iowa Code section 543B.22, a nonresident broker or firm is not obligated to maintain a definite place of business in Iowa if that broker or firm maintains an active place of business within the resident state or jurisdiction.

193E—5.8(543B) Actions against nonresidents. The application for a nonresident license is accompanied by an executed irrevocable written consent to suits and actions at law or in equity as provided in Iowa Code section 543B.23.

193E—5.9(543B) Nonresident continuing education. Nonresident licensees shall fully comply with all continuing education unless a separate education agreement is in place between Iowa and the nonresident state or jurisdiction.

193E—5.10(543B) License discipline reporting. If an Iowa licensee has a real estate license disciplined, suspended or revoked by any other state or jurisdiction, that disciplinary action will be considered prima facie evidence of violation of Iowa Code section 543B.29 or 543B.34 or both, and a hearing may be held to determine whether similar disciplinary action should be taken against the Iowa licensee. Failure to notify the commission within 15 days of an adverse action taken by another state or jurisdiction is cause for disciplinary action.

193E—5.11(543B) Licensure by verification. A person licensed in another state or jurisdiction may qualify for an Iowa salesperson or broker license through verification by making application as provided in rule 193—14.4(272C). In addition to all requirements provided by rule 193—14.4(272C), an applicant for a license through verification shall also submit to the commission proof of passing the Iowa portion of the salesperson or broker real estate examination.

5.11(1) *License terms.* Once the applicant submits an approved application and appropriate licensing fees, a license will be issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term.

5.11(2) Reserved.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 6
“Termination and Transfer”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter provides basic information on the structure and function of the Real Estate Commission when it comes to a licensee terminating employment or transferring to another licensed firm. These rules benefit the public and licensees in knowing about the organization and administration of the Commission.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

This proposed chapter provides administrative background for licensees to terminate or transfer the licensee’s license. No costs are imposed by this chapter. The agency bears the cost of staff salaries to process the appropriate applications.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees, future licensees, and the general public will benefit. The chapter establishes the structure and operations of the Commission, making it easier for licensees and the general public to understand the processes.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

No economic impact is imposed by this chapter. Commission staff bears the expense of processing proper applications.

- Qualitative description of impact:

The Commission ensures minimum standards for licensing.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules.

Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

There is not a significant impact to state revenues by this proposed chapter. Staff salaries are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The Commission does not charge a licensee to transfer or terminate the licensee's license. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were discussed. This is a procedural chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no alternative methods mentioned since this is a procedural chapter on how to terminate or transfer a license.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of the changes included in this proposed chapter. Regardless of the size of the business, the rules in this chapter are followed the same way.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 6 and adopt the following new chapter in lieu thereof:

CHAPTER 6
TERMINATION AND TRANSFER

193E—6.1(543B) Terminating employment or association. When a licensee is discharged by the affiliated broker or the licensee terminates the employment or association with the affiliated broker, the licensee immediately ceases all activities that need an active real estate license until such time as a new affiliated broker makes written request for the license and the license is reassigned to the new affiliated broker.

6.1(1) When a broker discharges a salesperson or broker associate, the broker complies with all criteria of Iowa Code section 543B.33. The releasing broker makes a reasonable effort to ensure that an application to inactivate the licensee is submitted electronically to the commission within 72 hours of the discharge date.

6.1(2) The licensee may terminate the employment or association by providing written notice to the affiliated broker advising the effective date of the termination and requesting that the license be immediately returned to the commission. The affiliated broker cannot refuse to comply with the request. The releasing broker makes every reasonable effort to ensure that the commission receives the electronic application within 72 hours of the termination date.

193E—6.2(543B) Transfer of license and necessary transfer application. All requests for transfer of license are made on the necessary electronic application for license transfer available from the commission. The license transfer application is only used for transferring the license from the affiliated broker to a new affiliated broker. This transfer application is only to be used if the transferring licensee has obtained the necessary information from the new affiliating broker. The license transfer application cannot be used for licensees who are terminated or who quit prior to obtaining a new affiliating broker. The transfer application cannot be backdated to a new affiliated broker.

6.2(1) The license transfer process involves three steps, and each step needs to be correctly completed to qualify as a valid transfer. The steps are as follows:

a. The transferring licensee submits the electronic transfer application available from the commission.

b. Both the new affiliating broker and releasing broker electronically approve the transfer request within 48 hours of receiving notification from the commission of the transfer request.

c. The electronic transfer application is approved and issued by the commission.

6.2(2) Transfer effective date. The effective date of the transfer is the date of approval and issuance from the commission.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 7
“Offices and Management”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 E Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter provides Iowans and licensees with information relevant to running the office and practice of a real estate firm. This chapter articulates practice standards and provides a scope of practice for the profession.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

This proposed chapter provides administrative background for rule guidelines for offices and management, along with licenses that are needed. This chapter also covers prohibited activities by nonlicensees. Many real estate brokers and firms employ nonlicensees for administrative work. This chapter is a guideline for nonlicensees. No costs are imposed by this chapter. There are costs associated with practice standards, since there is often time, effort and money associated with compliance.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees, future licensees, and the general public. The general public and licensees will benefit from this proposed rulemaking. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public is benefited by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Real Estate Commission (Commission) believes that the benefits achieved justify the costs because the proposed rules provide required guardrails for providing this important service to Iowans.

If this profession were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Commission.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean lower-skilled individuals providing services. An error in a real estate transaction could lead to significant injury to a consumer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to manage the full scope of Commission activities, which include oversight of practice standards, questions from licensees and the public, and administration of Commission meetings. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees. This chapter covers quite a bit of information; however, no fees are mentioned in this chapter.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None as a result of this proposed chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no rejections of alternative methods by the Commission for this proposed chapter. There were no areas in this chapter the Commission felt would benefit from any other changes.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. The rules are meant to ensure public safety in terms of practice standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
OFFICES AND MANAGEMENT

193E—7.1(543B) Real estate offices and licenses needed.

7.1(1) Every Iowa resident real estate firm or self-employed broker maintains an office as provided in Iowa Code section 543B.31.

A nonresident Iowa real estate broker or firm is not obligated to maintain a definite place of business within Iowa as provided in Iowa Code section 543B.22.

7.1(2) Sharing office space. It is acceptable for more than one broker to operate in an office at the same address if each broker maintains all records and trust accounts separate from all the others. Each broker operates under a business name, which clearly identifies the broker as an individual within the group of brokers.

7.1(3) Branch office. A licensed Iowa real estate firm or sole-proprietor broker maintaining a branch office displays a commission-issued branch office license in that location. The branch office license is issued in the name of the firm or sole-proprietor broker and includes the license number and the physical address of the branch office. The branch office license is issued at a reduced fee and has the same expiration date of the primary license.

7.1(4) When a real estate brokerage firm closes, the principal broker or a designated representative follows procedures as provided in 193E—Chapter 8.

7.1(5) A licensed officer of a corporation or partnership may be licensed as an officer or partner of more than one corporation or partnership. The main or primary license for which the full license fee was paid is maintained in active status to keep any additional licenses that were issued at a reduced fee active and in effect. A broker officer licensed to more than one corporation or partnership may be the designated broker of more than one corporation or partnership.

Continuing education is needed only for renewal of the main or primary license.

7.1(6) When a branch office closes, notice in writing, electronically or otherwise, shall be given to the commission.

7.1(7) Each actively licensed broker associate and salesperson is licensed under a broker.

7.1(8) A broker associate or salesperson may not be licensed under more than one broker during the same period of time.

193E—7.2(543B) Notification needed.

7.2(1) Partnerships, associations, and corporations are obligated to obtain a license before acting as a real estate broker. Failure of a broker to inform the commission in writing, electronic or otherwise, within five working days that the broker has formed a new partnership, association or corporation, or has changed the type of the business, is prima facie evidence of a violation of Iowa Code section 543B.1.

7.2(2) Failure of a broker to inform the commission in writing, electronic or otherwise, within five working days of a change in type of license as sole-proprietor broker, partner, officer or broker associate is prima facie evidence of a violation of Iowa Code sections 543B.1 and 543B.29(1).

7.2(3) Failure of a broker to inform the commission in writing, electronic or otherwise, within five working days of a change of address of a proprietorship, partnership, or corporation is prima facie evidence of a violation of Iowa Code section 543B.32.

7.2(4) Failure of a broker to return a license electronically to the commission office to ensure that it is received within 72 hours after a salesperson or broker associate is discharged or terminates employment is prima facie evidence of a violation of Iowa Code section 543B.33.

7.2(5) Failure of a licensee to inform the commission in writing, electronic or otherwise, within five working days of a change of residence address or mailing address is prima facie evidence of a violation of Iowa Code sections 543B.16 and 543B.18.

193E—7.3(543B) Suspended and revoked licenses.

7.3(1) As of the effective date of a suspended or revoked license, the licensee cannot engage in any activity that needs a real estate license as defined in Iowa Code chapter 543B.

7.3(2) When a sole-proprietor broker, corporation or partnership license is suspended or revoked, all licensees associated with or assigned to that sole-proprietor broker, corporation or partnership are automatically placed on inactive status for the duration of the suspension or revocation, unless transferred to another sole-proprietor broker, corporation or partnership.

a. When a suspension or revocation is determined, the commission also determines if the corporation or partnership license is automatically canceled.

b. If the broker whose license is suspended or revoked is the only licensed broker officer of a corporation, the corporation license will automatically be canceled.

7.3(3) A licensee whose license is suspended or revoked may receive compensation during the period of suspension or revocation only for those acts performed and for which compensation was earned when the person was actively licensed prior to the effective date of the suspension or revocation.

This rule does not determine if a licensee is entitled to compensation; such entitlement would depend upon the licensee's written employment or association agreement with the former affiliated broker and a matter of contract law.

7.3(4) All listings and property management agreements are canceled by the broker whose license is suspended or revoked upon receipt of the order of revocation or suspension and prior to the effective date of the order.

a. The seller or landlord, or buyer or tenant, are advised that the seller or landlord, or buyer or tenant, may enter into a listing or brokerage agreement with another broker of choice.

b. A broker whose license is suspended or revoked cannot sell or assign listings or management agreements to another broker without the written consent of the owner of the property, and any sale or assignment of listings or management agreements are completed prior to the effective date of the order.

7.3(5) A broker whose license is suspended or revoked cannot finalize any pending closings. This responsibility is given to another broker, an attorney, a financial institution, or an escrow company.

a. Transfer of this responsibility is done with the written approval of all parties to the transaction.

b. All parties to the transaction are advised of the facts concerning the situation and are provided the name, address, and telephone number of the responsible entity where all trust and escrow moneys will be held, with the written approval of all parties.

7.3(6) A broker whose license is suspended or revoked is barred from advertising real estate in any manner as a broker. All advertising, including but not limited to signs, is removed or covered within ten calendar days after the effective date of the suspension or revocation.

The real estate brokerage telephone is not answered in any manner to indicate the broker is active in the real estate business.

193E—7.4(543B) Barred practices. For purposes of this rule only the term “real estate licensee” means “real estate broker or real estate salesperson” as defined in Iowa Code chapter 543B. A licensee participating in any of the practices described in this rule is deemed to be engaging in unethical conduct and a practice harmful or detrimental to the public within the meaning of Iowa Code section 543B.29(1).

7.4(1) An arrangement in which a real estate licensee needs or conditions, in connection with the sale of a lot, that the real estate licensee receive from the homebuilder an exclusive right to sell or list the house to be constructed on the lot.

7.4(2) An arrangement in which a real estate licensee agrees to sell lots on behalf of a developer on the condition that the developer obligates each homebuilder purchasing such a lot to list the house to be constructed with the real estate licensee.

7.4(3) An arrangement in which a real estate licensee, in connection with the sale of a lot to a consumer or homebuilder, obligates the consumer or homebuilder to pay a commission on the value of the house to be constructed on the lot.

7.4(4) Any arrangement pursuant to which the sale of real estate to a prospective purchaser is conditioned upon the listing of real estate owned by the prospective purchaser with the real estate licensee.

7.4(5) An arrangement in which a real estate licensee, in connection with the sale of a lot to a consumer, obligates the consumer to use a specified homebuilder to build the house to be constructed on the lot.

7.4(6) Any arrangement in which a real estate licensee enters into an agreement with a mortgage broker, bank, savings and loan, or other financial institution pursuant to which the making of a loan is directly or indirectly conditioned upon payment of a real estate commission to the real estate licensee.

7.4(7) Any arrangement pursuant to which a real estate licensee who is affiliated with a mortgage broker, bank, savings and loan association or other financial institution benefits from the practice by the affiliated financial institution of granting mortgage loans or any other loan or financial services or the availability of other benefits directly or indirectly conditioned upon the use of the real estate services of the affiliated licensee.

7.4(8) Any arrangement barred by Iowa Code section 543B.60A.

This rule is intended only to regulate the licensing of real estate licensees in the state of Iowa. This rule is not intended nor should it be interpreted to supplant Iowa Code chapter 553 (The Iowa Competition Law) or as authorizing or approving business practices which are not specifically barred in this rule. The commission, upon receipt of any formal written complaint filed against a licensee alleging a violation of this rule, in addition to evaluating such complaint for license revocation or suspension under Iowa Code chapter 543B, forwards a copy of such complaint to the attorney general of the state of Iowa and to the United States Attorney for investigation and appropriate action.

193E—7.5(543B) Loan finder fees. The acceptance of a fee or anything of value by a real estate licensee from a lender or financing company for the referral or steering of a client to the lender for a loan is considered not in the best interest of the public and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

193E—7.6(543B) Lotteries barred. Licensees cannot engage in lotteries and schemes of sales involving selling of certificates, chances or other devices, whereby the purchaser is to receive property to be selected in an order to be determined by chance or by some means other than the order of prior sale, or whereby property more or less valuable will be secured according to chance or the amount of sales made, or whereby the price will depend upon chance or the amount of sales made, or whereby the buyer or tenant will not receive, rent, or lease any property. Such activities are declared to be methods by reason of which the public interests are endangered.

193E—7.7(543B) Broker needed to furnish progress report. After an offer to buy has been made by a buyer and accepted by a seller, either party may demand at reasonable intervals and the broker furnishes a detailed statement showing the current status of the transaction.

193E—7.8(543B) Disclosure of licensee interest, acting as a principal, and status as a licensee. A licensee cannot act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family, or on behalf of the brokerage, or on behalf of an organization or business entity in which the licensee has an interest, unless the licensee provides written disclosure of that interest to all parties to the transaction in accordance with Iowa Code section 543B.56(3) "b." Disclosure obligated under this rule is made at the time of or prior to the licensee's providing specific assistance to the party or parties to

the transaction. Copies of the disclosure may be provided in person, electronically or by mail, as soon as reasonably practical. If no specific assistance is provided, disclosure is provided prior to the parties' forming a legally binding contract, either prior to an offer made by the buyer or tenant or prior to an acceptance by the seller or landlord, whichever comes first.

7.8(1) *Licensee acting as a principal.* A licensee cannot acquire any interest in any property, directly or indirectly, nor can the licensee sell any interest in which the licensee, directly or indirectly, has an interest without first making written disclosure of the licensee's true position clear to the other party. Satisfactory proof of this disclosure is produced by the licensee upon request of the commission. Whenever a licensee is in doubt as to whether an interest, relationship, association, or affiliation obligates disclosure under this rule, the safest course of action is to make the written disclosure.

7.8(2) *Status as a licensee.* Before buying, selling, or leasing real estate as described above, the licensee discloses in writing any ownership, or other interest, which the licensee has or will have and the licensee's status to all parties to the transaction. An inactive status license does not exempt a licensee from providing the obligated disclosure.

7.8(3) *Dual capacity.* The licensee does not act in a dual capacity of agent and undisclosed principal in any transaction.

193E—7.9(543B) Financial interest disclosure needed. A licensee who has any affiliated business arrangement or relationship with any provider of settlement services, as defined below, and directly or indirectly refers business to that provider or affirmatively influences the selection of that provider discloses the arrangement and any financial interest to the person whose business is being referred or influenced. The obligated disclosure is acknowledged by the separate signatures of the person or persons whose business is being referred or influenced. The disclosure is given and signed before or at substantially the same time that the business is referred or the provider is selected. If the disclosure is made on a separate form, the licensee retains a copy of the signed disclosure in the transaction file for a period of five years after the execution.

7.9(1) An affiliated business arrangement means an arrangement in which a real estate licensee, or an associate of a real estate licensee, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in the business entity providing the service or product.

a. An associate means one who has one or more of the following relationships with a real estate licensee:

- (1) A spouse, parent, or child of a real estate licensee;
- (2) A corporation or business entity that controls, is controlled by, or is under common control with a real estate licensee;
- (3) An employee, officer, director, partner, franchiser or franchisee of a real estate licensee; or
- (4) Anyone who has an agreement, arrangement or understanding with a real estate licensee or brokerage, the purpose or substantial effect of which is to enable the real estate licensee to refer for any service, settlement service, or business or product related to the transaction and to benefit financially from the referral of that business.

b. Settlement services include services in connection with a real estate transaction including, but not limited to, the following: mortgage or other financing; title searches; title examinations; the provisions of title certificates, title insurance, hazard insurance; services rendered by an attorney; the preparation of documents; property surveys; the rendering of credit reports or appraisals; pest, fungus, mechanical or other inspections; services rendered by a real estate agent or broker; and the handling of the processing and closing of settlement.

c. An affiliated business arrangement does not include an arrangement in which a real estate licensee, or an associate of a real estate licensee, gives or pays an undisclosed commission in a transaction to any other licensee for a referral to provide real estate brokerage services, including franchise affiliates, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service. Referral fees or commissions paid by a licensee to another licensee under these conditions are exempted from the disclosure criteria.

7.9(2) No particular language is needed for the disclosure. To assist real estate licensees and the public, the commission recommends the following sample language:

| DISCLOSURE OF REFERRAL OF BUSINESS | |
|--|---|
| <p>I understand that _____ (name of real estate licensee) has an affiliate relationship with or owns an interest in _____ (name of company to which business is being referred) and is also recommending that I employ this company for _____ (type of service) _____.</p> | |
| <p>I understand that _____ (name of real estate licensee) may earn financial benefits from my use of this company. I understand that I am not obligated to use this company, and may select a different company if I wish to do so. This form has been fully explained to me and I have received a copy.</p> | |
| <p>_____ (Date)</p> | <p>_____ (Signature of person whose business is being referred)</p> |

7.9(3) The term “franchise” has the same meaning as set forth in 24 CFR Chapter XX, Section 3500.15(c) as of April 1995.

7.9(4) The term “affiliate relationship” means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

7.9(5) The term “beneficial ownership” means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person’s name.

7.9(6) The term “direct ownership” means the holding of legal title to an interest in a provider of settlement services except where title is being held for the beneficial owner.

7.9(7) The term “control” as used in the definition of “affiliate relationship” means that a person:

- a. Is a general partner, officer, director, or employer of another person;
- b. Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests of another person;
- c. Affirmatively influences in any manner the election of a majority of the directors of another person; or
- d. Has contributed more than 20 percent of the capital of the other person.

193E—7.10(543B) Agency-designated broker responsibilities. The following conditions and circumstances, together with the education and experience of licensed and unlicensed employees and independent contractors, is considered when determining whether or not the designated broker has met the supervisory responsibilities as set forth by Iowa Code section 543B.62(3) “b.”

7.10(1) When making a determination, the commission may consider, but is not limited to consideration of, the following:

- a. Availability of the designated broker/designee to assist and advise regarding brokerage-related activities;
- b. General knowledge of brokerage-related staff activities;
- c. Availability of quality training programs and materials to licensed and unlicensed employees and independent contractors;
- d. Supervisory policies and practices in the review of competitive market analysis, listing contracts, sales contracts and other contracts or information prepared for clients and customers;
- e. Frequency and content of staff meetings;

f. Written company policy manuals for licensed and unlicensed employees and independent contractors;

g. Ratio of supervisors to licensed employees and independent contractors; and

h. Assignment of an experienced licensee to work with new licensees.

7.10(2) The designated broker disseminates, in a timely manner, to licensed employees and independent contractors all regulatory information received by the brokerage pertaining to the practice of real estate brokerage.

193E—7.11(543B) Supervision needed. An employing or affiliated broker is responsible for providing supervision of any salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate does not relieve either the broker or the salesperson or broker associate of duties, obligations or responsibilities obligated by law.

7.11(1) Each salesperson and broker associate keeps the broker fully informed of all activities being conducted on behalf of the broker in accordance with Iowa Code section 543B.62(3) “*b.*”

7.11(2) The activities of a salesperson or broker associate acting as a principal in the sale, lease, rental, or exchange of property owned by the licensee could impact the salesperson’s or broker associate’s license and the license of the employing or affiliated broker.

a. When a licensee is acting as a principal, the licensee keeps the employing or affiliated broker fully informed of all activities.

b. While this rule does not obligate that a licensee list property owned by the licensee with the employing or affiliated broker, the broker may obligate as a condition of employment or affiliation that the licensee list the property with the employing or affiliated broker or pay a commission.

7.11(3) A broker associate means the same as Iowa Code section 543B.5(5) and rule 193E—2.1(543B). A broker associate is subject to the provisions of Iowa Code sections 543B.24 and 543B.33 and commission rules pertaining to salespersons during the time the broker remains a broker associate.

7.11(4) A broker who sponsors a salesperson during the salesperson’s first year of licensure must be able to demonstrate that the broker has the time available and experience necessary to adequately supervise an inexperienced salesperson.

193E—7.12(543B) Commission controversies. The commission will not and is not authorized by law to consider or conduct hearings involving disputes over fees or commissions between cooperating brokers, salespersons, and other brokers.

7.12(1) A former employing or affiliated broker may pay a commission directly to a broker associate or salesperson who is presently assigned to another broker or firm, or whose license is inactive, expired, suspended or revoked, only if the commission was earned while the broker associate or salesperson was actively licensed and assigned to the former broker. Whether or not a commission was earned while the broker associate or salesperson was licensed with the former broker depends upon the licensee’s written agreement with the former broker. The commission will not determine if a commission is earned or if a commission is to be paid.

7.12(2) If the licensee is presently assigned to another broker or firm, the former broker does not pay the commission to the new employing or affiliated broker or firm.

7.12(3) An Iowa real estate broker may pay a commission or fee to or receive a commission or fee from a nonresident broker who is actively licensed in the broker’s resident state but not licensed in Iowa. The nonresident broker takes no part in the listing, showing, negotiating offers or any other functions of a broker in Iowa unless actively licensed in Iowa.

7.12(4) Upon the termination of association or employment with the affiliated broker or firm, the broker associate or salesperson cannot take or use any written listing or brokerage agreements secured during the association or employment. Said listings and brokerage agreements remain the property of

the broker or firm and may be canceled only by the broker and the seller, unless the terms of the listing or brokerage agreement state otherwise.

193E—7.13(543B) Support personnel for licensees; permitted and barred activities. Whenever a licensee affiliated with a broker engages support personnel to assist the affiliated licensee in the activities of the real estate brokerage business, both the firm or sponsoring broker and the affiliated licensee are responsible for supervising the acts or activities of the personal assistant; however, the affiliated licensee has the primary responsibility for supervision. Unless the support person holds a real estate license, the support person cannot perform any activities, duties, or tasks of a real estate licensee as identified in Iowa Code sections 543B.3 and 543B.6 and may perform only ministerial duties that do not need discretion or the exercise of the licensee’s own judgment. Personal assistants are considered support personnel.

7.13(1) Individuals actively licensed with one firm or broker cannot work as support personnel for a licensee affiliated with another firm or broker. Individuals with an inactive status license may work as support personnel for a licensee, but cannot participate in any activity that needs a real estate license.

7.13(2) Any real estate brokerage firm or broker that allows an affiliated licensee to employ, or engage under an independent contractor agreement, support personnel to assist the affiliated licensee in carrying out brokerage activities comply with the following:

- a. Implement a written company policy authorizing the use of support personnel by licensees;
- b. Specify in the written company policy, which may incorporate the duties listed in subrule 7.13(4), any duties that the support personnel may perform on behalf of the affiliated licensee;
- c. Ensure that the affiliated licensee and the support personnel receive copies of the duties that support personnel may perform.

7.13(3) Broker supervision and improper use of license and office. While individual and designated brokers are responsible for supervising the real estate-related activities of all support personnel, an affiliated licensee employing a personal assistant has the primary responsibility for supervision of that personal assistant. A broker is not held responsible for inadequate supervision if:

- a. The unlicensed person violated a provision of Iowa Code chapter 543B or of commission rules that is in conflict with the supervising broker’s specific written policies or instructions;
- b. Reasonable procedures have been established to verify that adequate supervision was being provided;
- c. The broker, upon hearing of the violation, attempted to prevent or mitigate the damage;
- d. The broker did not participate in the violation; and
- e. The broker did not attempt to avoid learning of the violation.

7.13(4) In order to provide reasonable assistance to licensees and their support personnel, but without defining every permitted activity, the commission has identified certain tasks that unlicensed support personnel under the direct supervision of a licensee affiliated with a firm or broker may not perform.

- a. Permitted activities include, but are not limited to, the following:

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| (1) | Answer the telephone, provide information about a listing to licensees, and forward calls from the public to a licensee; |
| (2) | Submit data on listings to a multiple listing service; |
| (3) | Check on the status of loan commitments after a contract has been negotiated; |
| (4) | Assemble documents for closings; |
| (5) | Secure documents that are public information from the courthouse and other sources available to the public; |
| (6) | Have keys made for company listings; |
| (7) | Write advertisements and promotional materials for the approval of the licensee and supervising broker; |
| (8) | Place advertisements in magazines, newspapers, websites, social media, and other media as directed by the supervising broker; |
| (9) | Record and deposit earnest money, security deposits, and advance rents, and perform other bookkeeping duties; |

| | |
|------|--|
| (10) | Type contract forms as directed by the licensee or the supervising broker; |
| (11) | Monitor personnel files; |
| (12) | Compute commission checks; |
| (13) | Place signs on property; |
| (14) | Order items of routine repair as directed by a licensee; |
| (15) | Act as courier for such purposes as delivering documents or picking up keys. The licensee remains responsible for ensuring delivery of all executed documents obligated by Iowa law and commission rules; |
| (16) | Schedule appointments with the seller or the seller's agent in order for a licensee to show a listed property; |
| (17) | Arrange dates and times for inspections; |
| (18) | Arrange dates and times for the mortgage application, the preclosing walk-through, and the closing; |
| (19) | Schedule an open house; |
| (20) | Perform physical maintenance on a property; or |
| (21) | Accompany a licensee to an open house or a showing and perform the following functions as a host or hostess: <ol style="list-style-type: none"> 1. Open the door and greet prospects as they arrive; 2. Hand out or distribute prepared printed material; 3. Have prospects sign a register or guest book to record names, addresses and telephone numbers; 4. Accompany prospects through the home for security purposes and not answer any questions pertaining to the material aspects of the house or its price and terms. |
| (22) | Independently host open houses for tours attended by licensed brokers and salespersons only. |

b. Barred activities include, but are not limited to, the following:

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| (1) | Making cold calls by telephone or in person or otherwise contacting the public for the purpose of securing prospects for listings, leasing, sale, exchanges, or property management; |
| (2) | Independently hosting open houses, kiosks, home show booths, or fairs attended by the public; |
| (3) | Preparing promotion materials or advertisements without the review and approval of licensee and supervising broker; |
| (4) | Showing property independently; |
| (5) | Answering any questions on title, financing, or closings (other than time and place); |
| (6) | Answering any questions regarding a listing except for information on price and amenities expressly provided in writing by the licensee; |
| (7) | Discussing or explaining a contract, listing, lease, agreement, or other real estate document with anyone outside the firm; |
| (8) | Negotiating or agreeing to any commission, commission split, management fee, or referral fee on behalf of a licensee; |
| (9) | Discussing with the owner of real property the terms and conditions of the real property offered for sale or lease; |
| (10) | Collecting or holding deposit moneys, rent, other moneys or anything of value received from the owner of real property or from a prospective buyer or tenant; |
| (11) | Providing owners of real property or prospective buyers or tenants with any advice, recommendations or suggestions as to the sale, purchase, exchange, rental, or leasing of real property that is listed, to be listed, or currently available for sale or lease; or |
| (12) | Holding one's self out in any manner, orally or in writing, as being licensed or affiliated with a particular firm or real estate broker as a licensee. |

193E—7.14(543B) Information provided by nonlicensed support personnel limited. Nonlicensed support personnel may, on behalf of the employer licensee, provide information concerning the sale, exchange, purchase, rental, lease, or advertising of real estate only to another licensee. Support personnel provides information only to another licensee that has been provided to the personnel by the employer licensee either verbally or in writing.

193E—7.15(543B) Presenting purchase agreements. All written offers to purchase received by a listing broker or listing agent are promptly presented to the seller for formal acceptance or rejection. The formal acceptance or rejection of the offer is promptly communicated to the prospective buyers. Unless there is written agreement between the seller and the listing broker directing otherwise, the listing broker is obligated to present back-up offers until the transaction has closed.

7.15(1) A customer's agent seeking compensation from the listing broker cannot prepare an offer to purchase on the property without first obtaining authorization and agreement from the listing broker.

7.15(2) A real estate licensee cannot induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

7.15(3) Immediately upon receiving an offer to purchase signed and dated by the buyer with consideration, if any, the listing agent provides a copy of the offer to purchase to the buyer as a receipt.

7.15(4) A customer's agent or representative cannot negotiate directly or indirectly with a seller or buyer, or landlord or tenant, if the agent knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has a written unexpired listing or brokerage agreement for services on an exclusive basis.

7.15(5) A listing agent cannot refuse to permit a customer's agent or representative to be present at any step in a real estate transaction including, but not limited to, viewing a property, seeking information about a property, or negotiating directly or indirectly with an agent about a property listed by such agent; and no agent refuses to show a property listed by that agent or otherwise deal with a represented customer who requests that the customer's agent or representative be present at any step in the real estate transaction, except as provided in this subrule.

a. The customer's agent or representative does not have the right to be present at any discussion of confidential matters or evaluation of the offer by the seller and the listing agent.

b. Unless the seller provides written instructions to the listing agent to exclude a customer's agent or representative from being present when the offer is presented, it is not unlawful for the customer's agent or representative to be present.

c. Compliance with this rule does not need or obligate a listing broker to share any commission or to otherwise compensate a customer's agent.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 8
“Closing a Real Estate Business”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 E Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter articulates practice standards for closing a real estate business. The chapter provides the public and licensees with guidelines relevant to the provisions when a licensee wishes to close the licensee’s practice. The Real Estate Commission has quite a few people who retire or want to transfer to another company and no longer have their business open. This is a good source of information to follow.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Individuals closing a real estate brokerage firm bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from these proposed rules. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

No economic impact is imposed by these proposed rules. There are no fees associated with closing a real estate business. Licensees may bear the cost for recordkeeping and staff to ensure the licensees are meeting the requirements of this chapter.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean lower-skilled individuals providing services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees. The Commission does not charge to close an office.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

As stated above, no alternative methods are available for the Commission to consider in this proposed chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no rejections of alternative methods by the Commission for this proposed chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of this proposed chapter. No matter the size of the company, this process is necessary, and the same procedures apply.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
CLOSING A REAL ESTATE BUSINESS

193E—8.1(543B) Closing a real estate firm. The following steps are necessary for the voluntary closing of a real estate brokerage firm. The individual broker or the designated broker:

8.1(1) Notifies the commission via electronic application upon closing the firm. The following information may be included:

- a.* The date the firm closed or will close;
- b.* The location where records and files will be stored for a minimum of five years; and
- c.* The name, address, and telephone number of the custodian who will be storing the records and files;

8.1(2) Notifies all licensees associated with the firm in writing of the effective date of the closing. The former affiliated broker makes every reasonable effort to return the licenses of any licensees associated with the firm at the time of closing to the commission within 72 hours, with written notice that the firm is closed;

8.1(3) Notifies all listing and management clients as well as parties and co-brokers to existing contracts, in writing, advising of the date the firm will close. All listing and management clients are advised in writing that they may enter into a new listing or management agreement with the broker of their choice;

8.1(4) Removes advertising signs from all properties that were listed with or managed by the firm. Arrange to cancel advertising in the name of the firm, including office signs, Internet to include websites and social media and telephone listing advertisements;

8.1(5) Maintains all escrow or trust accounts until all moneys are transferred to the lending institution, an escrow company or an attorney for closing of the transaction, or are otherwise properly disbursed as agreed to in writing by the parties having an interest in the funds; and

8.1(6) Arranges for pending contracts to be closed by a lending institution, an escrow company or an attorney. In the case of a sale, transfer or merger of an existing brokerage, the acquiring broker may close the pending transactions acquired from the selling broker after having first obtained the express written consent of all parties to the transactions. The broker notifies all parties involved in pending transactions as to the name, address, and telephone number of the closing agent.

193E—8.2(543B) Involuntary closing of a sole-proprietor brokerage. Upon the death or disability of a sole-proprietor broker in which the affairs of the broker cannot be carried on, the following steps are necessary for closing the real estate brokerage business:

8.2(1) All licensees associated with the broker cease all brokerage activity until their licenses have been transferred to another broker;

8.2(2) The executor or legal representative of the broker's estate, if an attorney or a broker, may conclude pending business; and

8.2(3) The administrator or executor of the broker's estate or the legal representative of the broker may follow the procedures established in rule 193E—8.1(543B) for voluntary closing.

193E—8.3(543B) Involuntary closing of a corporation, partnership, or association brokerage firm.

8.3(1) In the event of an involuntary closing of a brokerage firm as a result of the death or incapacity of one or more of the licensed broker officers, broker partners or broker associates of a real estate corporation, partnership or association in which the affairs of the broker, partnership, corporation or association cannot be carried on, the following steps are necessary for closing the real estate brokerage business:

- a.* All licensees associated with the firm cease all brokerage activity until their licenses have been transferred to another broker;

b. The executor of the broker's estate, if an attorney, or the legal representative of the firm may conclude pending business; and

c. The administrator or executor of the broker's estate or the legal representative of the broker may follow the procedures established in rule 193E—8.1(543B) for voluntary closing.

8.3(2) In the event of the death or incapacity of a designated broker for a firm, the affairs of the firm may be carried on by naming a new designated broker. The commission is notified of the change within 72 hours.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 9
“Fees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter sets standards for fees for the Real Estate Commission (Commission). Iowa licensees, future licensees and employers will benefit from the rules since the rules articulate the process that individuals will need to follow to pay for initial licensure, renewal, and reinstatement.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Licensees are responsible for the cost of their initial license and renewal fees. The costs are comparable to surrounding states’ initial and renewal licensing fees.
 - Classes of persons that will benefit from the proposed rulemaking:
Licensees, future licensees, and the general public will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The fees imposed by this proposed chapter are as follows:

| | |
|---------------------------------------|-------|
| Broker license | \$170 |
| Additional officer or partner license | \$50 |
| Firm license | \$170 |
| Branch office license | \$50 |
| Trade name license | \$50 |
| Salesperson license | \$125 |

A \$25 reinstatement fee is added for late broker and salesperson renewals. The Commission is not implementing any changes to fees. The Commission is keeping the fees the same.

- Qualitative description of impact:

This proposed chapter provides the funding for the Commission and staff who maintain licensee quality through review of licensure standards and discipline.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Commission staff review applications for initial and renewal licenses, answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking a less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Staff did bring up fee changes to the Commission. Staff presented information regarding surrounding states. The Commission was confident in keeping fees as they are.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Commission feels as though the Commission's licensing fees are fair and comparable to surrounding states.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The fees remain the same.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
FEES

193E—9.1(543B) Fees.

9.1(1) Original license or renewal.

| | |
|---------------------------------------|-------|
| Broker license | \$170 |
| Additional officer or partner license | \$ 50 |
| Firm license | \$170 |
| Branch office license | \$ 50 |
| Trade name license | \$ 50 |
| Salesperson license | \$125 |

9.1(2) Fee for renewal of broker and salesperson license between January 1 and January 30 following expiration of license is the regular renewal fee plus \$25 reinstatement fee.

| | |
|---------------------|-------|
| Broker license | \$195 |
| Salesperson license | \$150 |

Reinstatement fee is not applicable to a firm license, additional officer license, additional partner license, trade name license, or branch office license.

9.1(3) Fee for certification of license is \$25.

193E—9.2(543B) Refunds and bad payments.

9.2(1) Fees remitted with an application for license will be refunded if the commission finds the applicant is not qualified for a license.

9.2(2) Fees will not be refunded for the unexpired term of a license that has been issued and is in effect.

9.2(3) A fee remitted in error will be refunded if it is received as a separate check. If not received as a separate check, a fee remitted in error will be refunded if a written request is received within 30 days of receipt of the fee.

9.2(4) Payment of a fee with a bad payment is prima facie evidence of a violation of Iowa Code section 543B.29(1) or 543B.34(8) or both.

9.2(5) If a bad payment is received for an original license, the application for license is deemed incomplete and the license null and void.

9.2(6) If a bad payment is received for renewal of a license, the application is deemed incomplete and the license issued for the new term is deemed null and void. If a replacement payment is not received by the commission by the date of expiration of the license (December 31), the appropriate reinstatement fee is added to the unpaid renewal fee.

193E—9.3(543B) Examination fee. The examination fee is paid directly to the testing service at the prevailing rate established by contract between the commission and the testing service.

These rules are intended to implement Iowa Code section 543B.27.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 10
“Advertising”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter articulates practice standards for advertising real estate services. The chapter provides the public and licensees with guidelines relevant to the provisions when a licensee is advertising. The Real Estate Commission receives quite a few complaints for unlicensed advertising, such as a tradename that could be a team name or another aspect of advertising other than the firm and licensee names. Advertising is a main source for licensees seeking new clients or listings. This is a good source of information to follow.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

This proposed chapter provides administrative background in order for the Commission to regulate advertising. No costs are imposed by this chapter on the public. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards. Licensees would bear the cost of licensing a tradename, which is \$50 for three years.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees benefit from these proposed rules. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The licensee may bear the cost of a \$50 tradename license. However, this is a choice for the licensee if the licensee chooses to advertise something other than the licensee's firm name and/or license name.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession was not regulated, it could mean lower-skilled individuals providing services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage board activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues. It could have a positive effect to state revenues if advertising tradenames were to dramatically rise. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

As stated above, no alternative methods are available for the Commission to consider in this proposed chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no rejections of alternative methods by the Commission for this proposed chapter. Since most advertising is now via social media and websites, some updates from the original chapter were made.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of this proposed chapter. No matter the size of the company, this process is necessary, and the same procedures apply.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
ADVERTISING

193E—10.1(543B) Advertising. A broker cannot advertise to sell, buy, exchange, rent, or lease property in a manner indicating that the offer is being made by a private party not engaged in the real estate business, and no real estate advertisement can show only a post office box number, telephone number or street address. Every licensee, when advertising real estate, will use the licensed business name or the name under which the broker is licensed, and affirmatively and unmistakably indicate that the party is a real estate licensee and not a private party. Each broker when operating under a franchise or trade name other than the broker's own name may license the franchise or trade name with the commission, or clearly reveal in all advertising that the broker is the licensed individual who owns the entity using the franchise or trade name.

10.1(1) Advertising includes all forms of identification, representation, promotion and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity. Forms of advertising include, but are not limited to, real estate brokerage checks, letterhead, email, signs, websites, social media and business cards.

10.1(2) Real estate advertising cannot be misleading or deceptive or intentionally misrepresent any property, terms, values, or policies and services of the brokerage.

10.1(3) All advertising is conducted under the supervision of the broker. The broker ensures the accuracy of the information and, upon becoming aware of a material error or an advertisement that is in violation of this chapter or Iowa Code chapter 543B, the broker promptly corrects the error or problem within ten calendar days.

10.1(4) A licensed firm advertising or marketing on a website or social media account that is either owned by or controlled by the licensed firm includes the following data on each page of the site on which the firm's advertisement or information appears:

- a. The firm or tradename as registered with the commission (abbreviations are not permitted);
- b. The city and state in which the firm's main office is located; and
- c. The states in which the firm holds a real estate brokerage license.

10.1(5) A licensee advertising or marketing on a website or social media account that is either owned by or controlled by the licensee includes the following data on each page of the site on which the licensee's advertisement or information appears:

- a. The licensee's legal name;
- b. The name of the firm or trade name with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted);
- c. The city and state in which the licensee's office is located; and
- d. The states in which the licensee holds a real estate broker or salesperson license.

10.1(6) A firm using any Internet electronic communication for advertising or marketing, including but not limited to email, websites, and social media accounts, includes the information in rule 193E—10.1(4).

10.1(7) A licensee using any Internet electronic communication for advertising or marketing, including but not limited to email, websites, and social media accounts, includes on the first or last page of all communications the information in rule 193E—10.1(5).

193E—10.2(543B) Advertising under own name. Salespersons and broker associates are barred from advertising under their own names unless they are the owners of the property they are advertising for sale, rent, lease or exchange, and on which no brokerage fees are to be paid. The sale is completely a “for sale by owner” transaction. The property cannot be listed or advertised in any way that would make it appear to be listed with a brokerage. The affiliated licensee cannot function in any capacity that needs a real estate license, and the licensee is responsible for all advertising conducted on the licensee’s own behalf.

193E—10.3(543B) Signs on property. Placing a sign on any property offering it for sale, rent, lease, or exchange without the written consent of the owner is not considered in the best interest of the general public.

10.3(1) When a listing expires, unless a new written listing or extension is obtained, the licensee immediately ceases advertising and active marketing of the property. The licensee makes every reasonable effort to remove signs as quickly as possible.

10.3(2) The licensee makes every reasonable effort to remove signs from the property after the transaction is closed. Sold signs and other signs are not left on properties without the written consent of the new owner of record.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 11
“Brokerage Agreements and Listings”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter articulates practice standards for brokerage agreements and listings. The chapter provides the public and licensees with guidelines relevant to the provisions when a consumer decides to enter into an agreement with a licensee. The Real Estate Commission (Commission) believes this chapter to be one that should be held to a high standard of practice. This chapter is important in protecting the public from substantial harm.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

This proposed chapter provides information regarding brokerage agreements and listings. No costs are imposed by this chapter. However, a high cost to the public could occur without the rules of this chapter. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees will benefit from these proposed rules. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

No economic impact is imposed by this rulemaking. There are no fees with the Commission regarding listings and brokerage agreements. The public could bear a high cost without the rules of this chapter.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean lower-skilled individuals providing services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Board activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

As stated above, no alternative methods are available for the Commission to consider in this proposed chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no rejections of alternative methods by the Commission for this proposed chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small businesses from this proposed chapter. No matter the size of the company, this process is necessary, and the same procedures apply.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
BROKERAGE AGREEMENTS AND LISTINGS

193E—11.1(543B) Listing brokerage agreements. All listing agreements are in writing, properly identifying the property and containing all of the terms and conditions under which the property is to be sold, including the price, the commission to be paid, the signatures of all parties concerned and a definite expiration date. The agreement contains no provision requiring a party signing the listing to notify the broker of the listing party's intention to cancel the listing after such definite expiration date. An exclusive agency or exclusive right to sell listing clearly indicates that it is such an agreement. A legible copy of every written listing agreement or other written authorization is given to the owner of the property by a licensee as soon as the signature of the owner is obtained.

11.1(1) A licensee cannot solicit or enter into a listing or brokerage agreement with an owner if the licensee knows or has reason to know that the owner has a written unexpired exclusive agency or exclusive right to sell listing agreement to the property with another broker, unless the owner initiates the discussion and the licensee has not directly or indirectly solicited the listing or brokerage agreement.

a. However, if the owner initiates the discussion, the licensee may negotiate and enter into a listing or brokerage agreement that will take effect after the expiration of the current listing.

b. If the owner initiates the discussion, the licensee may inform the owner that the owner needs to allow the current listing to expire or obtain a mutually acceptable cancellation from the listing broker before any further discussion can take place.

11.1(2) A real estate licensee cannot negotiate a sale, exchange, or lease of real property directly with an owner if it is known that the owner has a written unexpired contract in connection with the property which grants an exclusive right to sell to another broker, or which grants an exclusive agency to another broker.

11.1(3) A listing agreement cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

11.1(4) Net listing barred. No licensee makes or enters into a net listing agreement for the sale of real property or any interest in real property. A net listing agreement is an agreement that specifies a net sale price to be received by the owner with the excess over that price to be received by the broker as commission. The taking of a net listing is unprofessional conduct and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

11.1(5) A real estate licensee cannot induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

11.1(6) Any commission or fee in any listing agreement is fully negotiable among the parties to that listing agreement. Once the parties to a listing agreement have agreed to a commission or fee, no licensee other than a party to the listing agreement attempts to alter, modify, or change or induce another person to alter, modify or change a commission or fee that has previously been agreed upon without the prior written consent of the parties to that listing agreement.

193E—11.2(543B) Enforcing a protective clause. To enforce a protective clause beyond the expiration of an exclusive listing contract, there is a provision for the protective clause in the listing contract which establishes a definite protection period. In writing and prior to the expiration of the listing, the broker furnishes to the listing party the names and available contact information of persons to whom the property

was presented during the active term of the listing and for whom protection is sought. Delivery is by personal service with written acknowledgment of receipt, or by both regular mail and certified mail, return receipt requested.

193E—11.3(543B) Brokerage agreements. All brokerage agreements are written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker, the affiliated broker associate or salesperson cannot take or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.

11.3(1) Every written brokerage agreement includes, at a minimum, the criteria set forth in Iowa Code section 543B.57 and the following provisions:

a. All listing contracts and all brokerage agency contracts contain a statement disclosing the brokerage policy on cooperating with and compensating other brokerages whether the brokerage is acting as subagent or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to share the compensation with other brokerages. Such disclosure serves to inform the client of any policy that would limit the participation of any other brokerage; and

b. All listing contracts and all brokerage agency contracts comply with Iowa real estate law and commission rules including, but not limited to, rules 193E—11.1(543B) and 11.4(543B) and 193E—Chapter 15.

11.3(2) No licensee makes or enters into a brokerage agreement that specifies a net sale, lease, rental, or exchange price to be received by an owner and the excess to be received by the licensee as a commission.

11.3(3) The taking of a net brokerage agreement is unprofessional conduct and a practice that is harmful or detrimental to the public and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

11.3(4) Duration of relationship. The relationships commence at the time of the brokerage agreement and continue until closing of the transaction or performance or completion of the agreement by which the broker was engaged within the term of the agreement. If the transaction does not close, or the agreement for which the broker was engaged is not performed or completed for any reason, the relationship ends at the earlier of the following:

a. Any date of expiration agreed upon by the parties; or

b. Any termination by written agreement of the parties.

11.3(5) Obligation terminated. In addition to any continuing duty or obligation provided in the written agreement or pursuant to Iowa law and commission rules, a broker or brokerage engaged as a seller's or landlord's agent, buyer's or tenant's agent, subagent, or dual agent and affiliated licensees have the duty after termination, expiration, completion, or performance of the brokerage agreement to:

a. Account for all moneys and property related to and received during the engagement; and

b. Keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the engaging party or is otherwise confidential by statute or rule.

11.3(6) Compensation. In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.

a. Payment of compensation is not to be construed to determine or establish an agency relationship. The payment of compensation to a broker does not determine whether a brokerage relationship has been created between any broker and a seller, landlord, buyer, or tenant paying such compensation.

b. Written permission of the client is needed as follows:

(1) A seller's or landlord's agent may share the commission or other compensation paid by such seller or landlord with another broker, with the written consent of the seller or landlord.

(2) A buyer's or tenant's agent may share the commission or other compensation paid by such buyer or tenant with another broker, with the written consent of the buyer or tenant.

(3) Without the written approval of the client, a seller's or landlord's agent cannot propose to the buyer's or tenant's agent that such seller's or landlord's agent may be compensated by sharing compensation paid by such buyer or tenant.

(4) Without the written approval of the client, a buyer's or tenant's agent cannot propose to the seller's or landlord's agent that such buyer's or tenant's agent may be compensated by sharing compensation paid by such seller or landlord.

c. A broker may be compensated by more than one party for services in a transaction if the parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, lease, or exchange.

d. A licensee cannot accept, receive or charge an undisclosed commission for a transaction.

e. A licensee cannot give or pay an undisclosed commission to any other licensee for a transaction, except payment for referrals to other licensees, including franchise affiliates, to provide real estate brokerage services, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service.

f. A licensee cannot pay any undisclosed rebate to any party to a transaction.

g. A licensee cannot give any undisclosed credit against commission due from a client or licensee to any party to a transaction.

h. A licensee cannot accept, receive or charge any undisclosed payments for any services provided by any third party to any party to a transaction including, but not limited to, payments for procuring insurance or for conducting a property inspection related to the transaction.

i. The provisions of these rules do not apply to a gratuitous gift, such as flowers or a door knocker, to a buyer or tenant subsequent to closing and not promised or offered as an inducement to buy or lease, as long as any client relationship has terminated.

j. The provisions of these rules do not apply to a free gift, such as prizes, money, or other valuable consideration, to a potential party to a transaction or lease prior to the parties' signing a contract to purchase or lease and not promised or offered as an inducement to sell, buy, or lease, as long as no client relationship has been established with the buyer or lessee.

11.3(7) Solicitation of brokerage agreements. A licensee cannot advise, counsel, or solicit a brokerage agreement from a seller or buyer, or landlord or tenant, if the licensee knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has contracted with another broker for the same brokerage services on an exclusive basis.

a. This rule does not preclude a broker from entering into a brokerage agreement with a seller or buyer, or landlord or tenant, when the initial contact is initiated by the seller or buyer, or landlord or tenant, and the licensee has not directly or indirectly solicited the discussion, provided the brokerage agreement does not become effective until the expiration or release of the current brokerage agreement.

b. A brokerage agreement cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

11.3(8) Any commission or fee in any brokerage agreement is fully negotiable among the parties to that brokerage agreement. Once the parties to a brokerage agreement have agreed to a commission or fee, no licensee other than a party to that brokerage agreement attempts to alter, modify, or change or induce another person to alter, modify, or change a commission or fee that has previously been agreed upon without the prior written consent of the parties to that brokerage agreement.

11.3(9) A commission split agreement between brokers needs to be a separate document and not included in the purchase agreement. A purchase agreement should not be made contingent upon the selling broker's receiving a certain percentage of the listing broker's commission.

193E—11.4(543B) Terms or conditions. A licensee cannot write, prepare or otherwise use a contract containing terms or conditions that would violate real estate laws in Iowa Code chapter 543B or commission rules.

The broker is responsible to ensure that all preprinted documents and forms used are in compliance with these rules.

193E—11.5(543B) Distribution of executed instruments. Upon execution of any instrument in connection with a real estate transaction, a licensee, as soon as practicable, delivers a legible copy of the original instrument to each of the parties thereto. It is the responsibility of the licensee to prepare sufficient copies of such instruments to satisfy this criteria. The broker retains copies for five years.

193E—11.6(543B) Rebates and inducements.

11.6(1) A licensee cannot pay a commission, any part of a commission, or valuable consideration to an unlicensed third party for performing brokerage functions or engaging in any activity that needs a real estate license. Referral fees or finder's fees paid to unlicensed third parties for performing brokerage activities, or engaging in any activity that needs a real estate license, are barred.

11.6(2) In a listing contract, the broker is principal party to the contract. The broker may, with proper disclosure, pay a portion of the commission earned to an unlicensed seller or landlord that is a principal party to the listing contract. This will be deemed a reduction in the amount of the earned commission.

11.6(3) A licensee may present a gratuitous gift, such as flowers or a door knocker, to the buyer or tenant subsequent to closing and not promised or offered as an inducement to buy or lease. The permission and disclosure criteria of rule 193E—11.3(543B) do not apply as long as any client relationship has terminated.

11.6(4) A licensee may present free gifts, such as prizes, money, or other valuable consideration, to a potential party to a transaction or lease, prior to that party's signing a contract to purchase or lease and not promised or offered as an inducement to buy or lease. It is the licensee's responsibility to ensure that the promotion is in compliance with other Iowa laws, such as gaming regulations. The permission and disclosure criteria of rule 193E—11.3(543B) do not apply as long as no client relationship has been established with the buyer or lessee.

11.6(5) The offering by a licensee of a free gift, prize, money, or other valuable consideration as an inducement is free from deception and does not serve to distort the true value of the real estate service being promoted.

11.6(6) A licensee may make donations to a charity, or other not-for-profit organization, for each listing or closing, or both, that the licensee has during a specific time period. The receiving entity may be selected by the licensee or by a party to the transaction. The contribution may be in the name of the licensee or in the name of a party to the transaction. Contributions are permissible only if the following conditions are met:

- a.* There are no limitations placed on the payment;
- b.* The donation is for a specific amount;
- c.* The receiving entity does not act or participate in any manner that would need a license;
- d.* The licensee exercises reasonable care to ensure that the organization or fund is a bona fide nonprofit;
- e.* The licensee exercises reasonable care to ensure that the promotional materials clearly explain the terms under which the donation will be made; and
- f.* All necessary disclosures are made.

193E—11.7(543B) New construction. A contract with a builder to construct or attach personal property or other type of structure to land and thereby produce an improvement to real estate is a real estate transaction. A licensee makes written disclosure revealing that the licensee and the licensee's broker or brokerage firm will receive a commission, compensation, or valuable consideration for its efforts in the transaction, as obligated by paragraph 11.3(6) "d." Written disclosure is necessary regardless of the type of representation provided by the licensee or if the licensee provides no representation.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 12
“Disclosure of Relationships”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter articulates practice standards for licensees to disclose any and all relationships associated in a given transaction. The chapter provides the public and licensees with guidelines relevant to the provisions when a consumer decides to enter into an agreement with a licensee but has other relationship types within a transaction. The Real Estate Commission (Commission) believes this chapter to be one that should be held to a high standard of practice. This chapter is important in protecting the public from substantial harm.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Professional standards of practice are undoubtedly associated with costs to the licensed professional. The Commission is unable to assess a cost related to the specific requirements. This proposed chapter requires written procedures to disclose certain relationships involved in a given transaction. Establishing minimum requirements ensures safety for the licensee and consumer. Disciplinary fines could be imposed on a licensee for not following the rules in this chapter. The fines are capped at \$2,500 per public order.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefits of this proposed chapter are to ensure public safety and welfare. The rules provide standards of practice for the licensees to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Professional standards of practice are undoubtedly associated with costs to the licensed professional. The Commission is unable to assess a cost related to the specific requirements. This proposed chapter requires written procedures to disclose certain relationships involved in a given transaction. Establishing minimum requirements ensures safety for the licensee and consumer. Disciplinary fines could be imposed on a licensee for not following the rules in this chapter. The fines are capped at \$2,500 per public order.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the public and protection for the consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field. If this profession was not regulated, it could mean lower-skilled individuals providing services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

As stated above, no alternative methods are available for the Commission to consider in this proposed chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no rejections of alternative methods by the Commission for this proposed chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of this proposed chapter. No matter the size of the company, this process is necessary, and the same procedures apply.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
DISCLOSURE OF RELATIONSHIPS

193E—12.1(543B) Written company policy needed. Every licensed sole-proprietor single broker, firm, partnership, limited liability company, association, or corporation has a written company policy. Regardless of the type or types of agency relationships offered, a written company policy is needed.

12.1(1) The written company policy identifies and describes the types of real estate brokerage relationships in which the broker and affiliated licensees may engage with seller, landlord, buyer, or tenant as a part of any real estate brokerage business activities.

12.1(2) In addition, every real estate brokerage that offers representation to both buyers and sellers, and tenants and landlords, also specifically addresses the following:

- a. The appointed agent's policy and brokerage procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the brokerage; and
- b. The arrangement of brokerage office space and the personal relationships of affiliated licensees who are representing clients with adverse interests.

12.1(3) A broker is not obligated to offer or engage in more than one type of brokerage relationship as enumerated in rules 193E—12.3(543B) to 193E—12.5(543B).

193E—12.2(543B) Disclosure of agency.

12.2(1) A licensee cannot represent any party or parties to a real estate transaction or otherwise act as a real estate broker or salesperson unless that licensee makes disclosure to all obligated parties to the transaction identifying which party or parties, if any, that licensee represents in the transaction. Disclosure pursuant to this rule is made by the licensee at the time the licensee provides specific assistance to the client or nonrepresented customer.

12.2(2) Verbal disclosure needed. The disclosure obligated by subrule 12.2(1) is made verbally by the licensee prior to the licensee's providing specific assistance to the client or nonrepresented customer. A change in the licensee's representation that makes the initial verbal disclosure incomplete, misleading, or inaccurate obligates that a new verbal disclosure be made immediately.

12.2(3) Written disclosure needed. The written disclosure obligated by subrule 12.2(1) is made by the licensee to all parties to a real estate transaction identifying which party the licensee represents in the transaction.

a. The written disclosure is needed to be made to the buyer or tenant prior to any offer, lease, or rental agreement being made or signed by the buyer or tenant, and prior to any offer, lease, or rental agreement being signed or accepted by the seller or landlord.

b. The written disclosure is acknowledged by separate signatures of all parties to the transaction. A change in the licensee's representation that makes the initial written disclosure incomplete, misleading, or

inaccurate obligates that a new verbal disclosure be made which is followed by a new written disclosure signed by all parties to the transaction as soon as practical.

12.2(4) A licensee representing a buyer or tenant informs the listing broker, the listing agent, or the seller or landlord of the agency relationship in accordance with Iowa Code section 543B.57(5). If the property is not listed, the obligated disclosure is made to the unrepresented seller or landlord.

12.2(5) The seller or landlord may, in the listing or brokerage agreement, authorize the seller's or landlord's broker to disburse part of the broker's compensation to other brokers, including a buyer's or tenant's broker solely representing the buyer or tenant.

12.2(6) Nothing contained in this rule obligates any buyer or tenant or seller or landlord to pay compensation to a licensee unless the buyer or tenant or seller or landlord has entered into a written listing or brokerage agreement with the broker specifying the compensation terms and conditions, in accordance with Iowa real estate license law and commission rules.

12.2(7) The obligation of either the seller or landlord or buyer or tenant to pay compensation to a broker does not establish an agency relationship or affect any agency relationship.

12.2(8) Nothing contained in this rule bars a party from entering into a written listing or brokerage agreement with a broker which contains duties, obligations, and responsibilities that are in addition to those specified in Iowa real estate license law and commission rules.

12.2(9) A licensee cannot be the agent for both the buyer or tenant without following Iowa Code section 543B.58(1).

12.2(10) A licensee may work with and establish different types of agency relationships with the same client, in separate transactions. Examples of different agency relationships with the same client in separate transactions include, but are not limited to, the following:

a. A common example includes a licensee acting as a listing or seller's agent selling a property in one transaction and also working with and representing this same person in another transaction as a buyer's agent in the purchase of a different property.

b. A licensee may act as a dual agent in either of the separate transactions, or both, with the written permission of the parties to the specific transaction and if the broker or brokerage has a written company policy that includes disclosed dual agency for in-house transactions or same agent transactions.

c. Regardless of the type of agency relationship provided in each transaction, the licensee complies with the criteria of Iowa Code chapter 543B and this rule in establishing the relationships for each separate transaction.

12.2(11) An agency relationship disclosure is not needed when the licensee is acting solely as a principal and not as an agent for another or when a written communication from the licensee is a solicitation of business.

12.2(12) If the seller, landlord, buyer, or tenant rejects representation, or refuses to sign the agency disclosure document, or refuses to sign acknowledging receipt of the disclosure, the licensee notes that fact and includes the date, place, time, and the names of others in attendance on a copy of the agency disclosure document and obtains other documentation establishing delivery of the disclosure and maintains the written documentation, including but not limited to copies of facsimile, restricted delivery certified mail, and other communications, in the transaction file.

12.2(13) A licensee who is offering real estate brokerage services as an auctioneer makes the written disclosure to the buyer and obtains the acknowledgment of receipt obligated by law and rules, prior to the buyer's entering into a written purchase agreement for the property. For the purposes of this rule, the identification of the successful bidder constitutes the first meaningful contact with a buyer when specific assistance is provided. After the first meaningful contact, the first practical opportunity to make the necessary disclosures to the buyer depends upon the circumstances. While it is not necessary, it is recommended that licensees disclose in all advertisements and flyers that they are licensed agents representing the seller and, prior to crying the auction, announce that they are licensed real estate agents representing the seller.

a. Disclosure under this rule applies only to the day of the auction.

b. If the licensee provides brokerage services prior to the auction, the disclosure is made either orally or in writing prior to or at the time of specific assistance being provided.

12.2(14) The licensee retains a copy of the disclosure form signed by the prospective buyer, seller, landlord or tenant, or the documentation and copies as obligated in subrule 12.2(12) as follows:

- a. If an offer is accepted, the signed or noted copy is retained by the broker in the closed transaction file for a period of five years from the date of the signature or note.
- b. If the offer is not accepted, a signed and noted copy is retained with the rejected offer for a period of five years.

12.2(15) Failure of a licensee to comply with this rule is prima facie evidence of a violation of Iowa Code section 543B.34(4).

12.2(16) Failure of a licensee to act consistent with disclosure representations made pursuant to this rule is prima facie evidence of a violation of Iowa Code section 543B.34(4).

12.2(17) Nothing in this rule affects the validity of title to real property transferred based solely on the reason that any licensee failed to conform to the provisions of this rule.

12.2(18) A sole-proprietor single broker or firm is not obligated to offer or engage in more than one type of brokerage relationship as enumerated in rules 193E—12.3(543B) to 193E—12.5(543B).

12.2(19) The licensee offering brokerage services to a person as a buyer's or tenant's agent, or who is providing brokerage services to a person as a seller's or landlord's agent, discloses in writing to that person the type or types of brokerage relationships the broker and affiliated licensees are offering to that person before entering into a listing or brokerage agreement with that person.

193E—12.3(543B) Single agent representing a seller or landlord.

12.3(1) *Duty to seller or landlord.* A licensee representing a seller or landlord as an exclusive seller's agent or an exclusive landlord's agent have the following duties and obligations:

- a. Perform the terms of the written agreement made with the seller or landlord;
- b. Exercise reasonable skill and care for the seller or landlord;
- c. Promote the interests of the seller or landlord with the utmost care, integrity, honesty, and loyalty, including but not limited to the following:
 - (1) Seeking a price and terms which are acceptable to the seller or landlord, except that the licensee is not obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;
 - (2) Presenting all written offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease, unless it is provided for by the brokerage agreement;
 - (3) Disclosing to the seller or landlord all material adverse facts pursuant to Iowa Code section 543B.56(1);
 - (4) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
 - (5) Preserving the seller's or landlord's confidential information as defined in rule 193E—2.1(543B), unless disclosure is mandated by law or unless failure to disclose such information would constitute fraud or dishonest dealing, including but not limited to the following:
 1. Information concerning the seller or the landlord that, if disclosed to the other party, could place the seller or landlord at a disadvantage when bargaining;
 2. That the seller or landlord is willing to accept less than the asking price or lease price for the property;
 3. What the motivating factors are for the client's selling or leasing the property;
 4. That the seller or landlord will agree to sale, lease, or financing terms other than those offered;
 5. The seller's or landlord's real estate needs;
 6. The seller's or landlord's financial information;
 - (6) Accounting in a timely manner for all money and property received;
 - (7) Providing brokerage services to all parties to the transaction honestly and in good faith;
 - (8) Complying with all criteria of Iowa Code chapter 543B and all commission rules and regulations;

(9) Complying with any applicable federal, state, or local laws, rules, or ordinances, including fair housing and civil rights statutes and regulations.

12.3(2) *Duty to a buyer or tenant.* A licensee acting as an exclusive seller's or exclusive landlord's agent discloses to any customer all material adverse facts actually known by the licensee pursuant to Iowa Code section 543B.56.

a. The licensee owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the seller or landlord or any independent inspector, unless the licensee knows or has reason to believe the information is not accurate.

b. Nothing in this rule precludes the obligation of a buyer or tenant from the responsibility of protecting the buyer's or the tenant's own interest by means of, but not limited to, inspecting the physical condition of the property and verifying important information.

c. A seller or landlord may agree in writing with an exclusive seller's or exclusive landlord's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the seller's or landlord's behalf is an agent with the same obligations and responsibilities to the seller or landlord as the primary broker of the seller or landlord.

d. A real estate brokerage engaged by a seller or landlord in a real estate transaction may provide assistance to an unrepresented buyer or tenant by performing such acts as preparing offers and conveying those offers to the seller or landlord and providing information and assistance concerning professional services not related to real estate brokerage services.

12.3(3) *Alternative properties.* The licensee may show alternative properties not owned by the seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord.

193E—12.4(543B) Single agent representing a buyer or tenant.

12.4(1) *Duty to buyer or tenant.* A licensee representing a buyer or tenant as an exclusive buyer's or an exclusive tenant's agent have the same duties and obligations as mentioned in subrule 12.3(1).

a. Perform the terms of any written agreement made with the client;
b. Exercise reasonable skill and care for the client;
c. Promote the interests of the client with the utmost good faith, loyalty, and fidelity, including but not limited to the following:

(1) Seeking a property at a price and terms which are acceptable to the buyer or tenant, except that the licensee is not obligated to seek other properties while the client is a party to a contract to purchase property, or to a lease or letter of intent to lease, unless it is provided for by the brokerage agreement;

(2) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or letter of intent to lease;

(3) Disclosing to the buyer or tenant material adverse facts concerning the property and the transaction that are actually known by the licensee, pursuant to Iowa Code section 543B.56;

(4) Advising the buyer or tenant to obtain expert advice on material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(5) Preserving the buyer's or tenant's confidential information as defined in rule 193E—2.1(543B), unless disclosure is mandated by law or unless failure to disclose such information would constitute fraud or dishonest dealing, including but not limited to the following:

1. Information concerning the buyer or the tenant that, if disclosed to the other party, could place the client at a disadvantage when bargaining;

2. That the buyer or tenant is willing to pay more than the asking price or lease price for the property;

3. What the motivating factors are for the party's buying or leasing the property;

4. That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;

5. The buyer's or tenant's real estate needs;

6. The buyer's or tenant's financial qualifications;

- (6) Accounting in a timely manner for all money and property received;
- (7) Providing brokerage services to all parties to the transaction honestly and in good faith;
- (8) Complying with all criteria of Iowa Code chapter 543B and all commission rules;
- (9) Complying with any applicable federal, state, or local laws, rules, and ordinances, including fair housing and civil rights statutes and regulations.

12.4(2) *Duty to a seller or landlord.* A licensee acting as an exclusive buyer's or an exclusive tenant's agent discloses to any customer all material adverse facts actually known by the licensee, pursuant to Iowa Code section 543B.56.

a. The licensee owes no duty to conduct an independent investigation of the buyer's or tenant's financial condition for the benefit of the seller or landlord and owes no duty to verify the accuracy or completeness of any statement made by the buyer or tenant or any independent source, unless the licensee knows or has reason to believe the information is not accurate.

b. Nothing in this rule limits the obligation of a seller or landlord from the responsibility of protecting the seller's or landlord's own interest by means of, but not limited to, verifying information concerning or provided by the buyer or tenant.

c. A buyer or tenant may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the buyer's or tenant's behalf is a single agent with the same obligations and responsibilities to the buyer or tenant as the primary broker of the buyer or tenant.

d. A real estate brokerage engaged by a buyer or tenant in a real estate transaction may provide assistance to an unrepresented seller or landlord by performing such acts as preparing offers and conveying those offers to the buyer or tenant and providing information and assistance concerning professional services not related to real estate brokerage services.

12.4(3) *Competing buyers or tenants.* The licensee may show properties in which the buyer or tenant is interested to other prospective buyers or tenants, may assist other competing buyers or tenants, and may enter into brokerage service agreements with other competing buyers or tenants without breaching any duty or obligation to the buyer or tenant.

193E—12.5(543B) Disclosed dual agent.

12.5(1) A brokerage which has a company policy that permits disclosed dual agency for in-house transactions provides a disclosed dual agency consent agreement to the client or prospective client prior to engaging in any activities of a dual agent. If any seller, landlord, buyer, or tenant rejects dual agency, or refuses to sign consent to dual agency, the licensee cannot act as a dual agent. The dual agency consent agreement complies with Iowa law and commission rules including, but not limited to, the criteria to inform the prospective clients that they are not obligated to consent to dual agency representation as provided by subrule 12.5(2).

a. A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent is evidenced by a written agreement pursuant to Iowa law and commission rules.

b. A dual agent is an agent for both the seller and buyer or the landlord and tenant and has the duties and obligations needed for a single agent representing a seller or landlord and for a single agent representing a buyer or tenant, unless otherwise provided for in this rule.

c. A dual agent discloses to the client all material adverse facts concerning the property that are actually known by the licensee, pursuant to Iowa Code section 543B.56.

d. A dual agent cannot disclose to one client confidential information about the other client and preserves a seller's or a landlord's, or a buyer's or a tenant's, confidential information as defined in rule 193E—2.1(543B), unless disclosure is mandated by law, or failure to disclose such information would constitute fraud or dishonest dealing, or disclosure is authorized by express instruction. A dual agent does not terminate the dual agency relationship by making the disclosures mandatory or permitted by the dual agency consent agreement. Confidential information includes the same information as rule 193E—12.3(1) or 193E—12.4(1).

e. In any transaction, a licensee may withdraw from representing a client who has not consented to a disclosed dual agency at any time prior to the existence of the dual agency, which is prior to discussing

any seller's or landlord's property with a potential buyer or tenant and prior to discussing any potential buyer or tenant with a seller or landlord, when both the seller or landlord and the buyer or tenant are represented by and are clients of the licensee.

(1) All withdrawals are made in writing and acknowledged by the separate signatures of the clients.

(2) Such withdrawal does not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions not involving a dual agency.

12.5(2) A dual agency consent agreement:

- a.* Fairly and accurately describes the type of representation the licensee will provide each client;
- b.* Contains a statement of the licensee's duties under Iowa Code section 543B.56(1);
- c.* Contains a statement of the licensee's duties under Iowa Code section 543B.56(2);
- d.* Informs the clients that representing more than one party to a transaction may present a conflict of interest;
- e.* Informs the clients that they are not obligated to consent to dual agency;
- f.* Provides additional information that the licensee determines is necessary to clarify the licensee's relationship with each client, including any changes from prior types of representation;
- g.* Describes the confidential information a dual agent will not disclose to one client about the other client; and
- h.* Includes a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

12.5(3) No particular disclosure language is needed. The commission recommends use of the following sample language to satisfy the mandatory disclosure regarding conflict of interest:

Representing more than one party to a transaction can create a conflict of interest since both clients may rely upon the broker's advice and the clients' respective interests may be adverse to each other. Broker will endeavor to be impartial between seller and buyer and will not represent the interest of either the seller or buyer to the exclusion or detriment of the other.

12.5(4) Potential dual agency agreement. A brokerage which has a company policy that permits disclosed dual agency for in-house transactions and that elects to use a potential dual agency agreement provides the agreement to the client or prospective client prior to engaging in any activities of a dual agent. Such consent agreement complies with Iowa law and commission rules.

- a.* The potential dual agency agreement should be provided to the seller or landlord prior to entering into a listing agreement or a contract for seller or landlord brokerage services.
- b.* The potential dual agency agreement should be provided to the buyer or tenant prior to entering into a buyer or tenant agency agreement or a contract for buyer or tenant brokerage services.
- c.* If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure is presented to the buyer or tenant prior to the buyer's or tenant's signing an offer to purchase or a rental or lease agreement. The buyer or tenant may accept or reject dual agency at this point in the transaction.
- d.* If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure is presented to the seller or landlord prior to the seller's or landlord's signing or accepting an offer to purchase or a rental or lease agreement. The seller or landlord may accept or reject dual agency at this point in the transaction.
- e.* If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, the obligated subsequent dual agency consent disclosure is property-specific and complies with Iowa law and commission rules.

193E—12.6(543B) Appointed agents within a brokerage. Iowa Code section 543B.59 authorizes a designated broker to elect to appoint in writing one or more different licensees affiliated with the broker to act as agent to represent exclusively different clients in the same transaction, to the exclusion of all other affiliated licensees within the real estate brokerage. A licensee cannot disclose, except to the licensee's designated broker, information made confidential by request or instructions of the client the licensee is

representing or otherwise confidential by statute or rule, except information allowed by this chapter or mandated to be disclosed by law.

12.6(1) The designated broker may want to include in the written company policy some or all of the appointed agents within the brokerage and may want to include the procedure by which the appointment of the agent or agents is made.

12.6(2) The designated broker may decide that since both seller and buyer, or landlord and tenant, brokerage relationships are being offered to consumers by the broker's company, only the affiliated licensee who, on behalf of the designated broker, entered into the listing agreement with the seller or leasing agreement with the landlord will represent the seller or landlord as that client's agent. In that scenario, all other licensees affiliated with the designated broker will represent buyers or tenants as their agents in any transactions dealing with the subject property.

12.6(3) If any seller, landlord, buyer, or tenant who is a client of the broker refuses to sign and consent to the appointed agent within the brokerage appointed by that same broker for the other party to the transaction, then the broker and licensees affiliated with the broker cannot act as an appointed agent for that other party.

193E—12.7(543B) Appointed agent procedures and disclosure.

12.7(1) Prior to entering into a listing or brokerage agreement, a real estate brokerage notifies a client in writing of the real estate brokerage's appointed agent policy and those affiliated licensees in accordance with Iowa Code section 543B.59(1). The appointed agent disclosure includes, at a minimum, the following provisions:

- a.* The name of the appointed agent(s);
- b.* A statement that the appointed agent will be representing the client as the client's agent and will owe the client duties as set forth in Iowa Code sections 543B.56(1) and 543B.56(2);
- c.* A statement that the brokerage may be representing both the seller and the buyer in connection with the sale or purchase of real estate;
- d.* A statement that other affiliated licensees may be appointed during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the designated broker and the client. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any of the duties owed to the client. At any time of the appointment of the new or additional agents, the designated broker complies with the provisions of this rule; and
- e.* A provision for the client to consent or not consent in writing to the appointment.

12.7(2) Implementation of the appointed agent within a brokerage relationship. Any broker may elect to offer the appointed agent relationship. The broker cannot implement the use of the relationship until such time as the broker has fully complied with all Iowa laws and commission rules.

a. The broker cannot, without the written consent of the clients, appoint an affiliated licensee to act as an appointed agent in any transaction involving a written exclusive single agent or dual agent brokerage agreement that was in effect prior to the broker's implementing the appointed agent relationship.

b. If the client of an appointed agent wants to consider a property on which the broker has a prior existing exclusive single agent or dual agent brokerage agreement, the broker cannot allow the use of the appointed agent without first obtaining the written consent of that particular seller or landlord to the appointed agent relationship.

c. If the written consent of the client to allow the appointed agency relationship is not given or cannot be obtained, the broker refers the client of the appointed agent to another broker for representation at least for the purpose of considering such property.

12.7(3) A designated broker cannot be considered to be a dual agent solely because the designated broker makes an appointment under this rule, except that any licensee who, with prior written consent of all parties, personally represents both the seller and buyer or both the landlord and tenant in a transaction is a dual agent and needs to comply with the rules governing dual agents.

12.7(4) Appointed agent and designated broker responsibilities.

a. A designated broker appointing an affiliated licensee(s) to act as an agent of a client takes ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.

b. An appointed agent may disclose to the brokerage's designated broker, or a designee specified by the designated broker, confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction, or to comply with the broker's supervisory duties. Confidential information is treated as such by the designated broker or other specified representative of the broker and is not disclosed unless otherwise obligated by Iowa law and related commission rules or requested or permitted in writing by the client who originally disclosed the confidential information.

c. If a designated broker elects to use the appointed agent within a firm authority set forth in Iowa Code section 543B.59, and when the affiliated licensee appointed also acts in a supervisory capacity under the designated broker, such as branch managers, sales managers and the like, these appointed licensees may be treated in the same manner as the designated broker for purposes of determining dual agency under Iowa Code section 543B.59(2), only if the designated broker authorizes and provides for such supervisory positions in the written company policy.

(1) A designated broker may elect to authorize and appoint an affiliated licensee in a supervisory capacity to supervise and assist licensees appointed to exclusively represent a seller or landlord in a transaction.

(2) A designated broker may elect to authorize and appoint an affiliated licensee in a supervisory capacity to supervise and assist licensees appointed to exclusively represent a buyer or tenant in a transaction.

(3) A licensee in a supervisory capacity that is authorized and appointed to supervise and assist licensees appointed to represent a seller or landlord, or buyer or tenant, exclusively, have the same duties, obligations, and responsibilities as the designated broker.

(4) The use of an authorized appointed agent does not relieve the designated broker of duties, obligations, and responsibilities mandated by law or rules.

12.7(5) Licensee's duty to designated broker or designee. A licensee keeps the brokerage's designated broker or that broker's designee fully informed of all activities conducted on behalf of the brokerage and notifies the designated broker or that broker's designee of any other activities that might impact on the responsibility of the designated broker or that broker's designee.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 13
“Trust Accounts and Closings”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter articulates practice standards for brokers to maintain a trust account. The chapter provides the public and licensees with guidelines relevant to the provisions of a trust account. The consumer and public should be aware of where their money is at all times in a transaction. The Real Estate Commission (Commission) believes this chapter to be one that should be held to a high standard of practice. This chapter is important in protecting the public from substantial harm.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

This proposed chapter provides administrative background for real estate trust accounts and costs. Licensees bear the costs to comply with the rules. A high cost to the public could occur without the rules of this chapter.

- Classes of persons that will benefit from the proposed rulemaking:

The general public and licensees will benefit from these proposed rules. These rules provide standards of practice for a licensee to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

It is difficult to quantify the costs imposed on licensees through the time and effort necessary to comply with these proposed rules. Without this chapter, costs could be high to the public.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean lower-skilled individuals providing services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The trust account auditor for the Commission thoroughly went through this chapter and made all the revisions the trust account auditor thought were necessary, and the Commission agrees with the recommendations.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no rejections of alternative methods by the Commission for this proposed chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of the proposed chapter. No matter the size of the company, this process is necessary and the same procedures apply.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
TRUST ACCOUNTS AND CLOSINGS

193E—13.1(543B) Trust account. All earnest payments, all rents collected, property management funds, and other trust funds received by the broker in such capacity or broker associate or salesperson on behalf of the broker’s client are deposited in a trust account maintained by the broker in an identified trust account, with the word “trust” in the name of the account, in a federally insured depository institution and, for the purposes of this rule, may be referred to as the “depository.”

13.1(1) All money belonging to others received by the broker, broker associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa are trust funds and are deposited in a trust account as directed by the principals to a transaction constituting dealing in real estate. This includes, but is not limited to, receipts from property management contracts; rental or lease contracts; advance fee contracts; escrow contracts; collection contracts; earnest money contracts; or money received by a broker for future investment or other purpose, except a nonrefundable retainer need not be placed in an escrow account if specifically provided for in the written agreement between the broker and the broker’s principal.

a. All trust funds are deposited into the trust account no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained unless otherwise specified in the contract.

b. Money belonging to others cannot be invested in any type of fixed-term maturity account, security or certificate without the written consent of the party or parties to whom the money belongs.

c. A broker cannot commingle personal funds in a trust account unless authorized by Iowa Code section 543B.46(4).

The broker ensures that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46 and that at no time are trust moneys used to cover any charges. Upon notification that the broker’s personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker deposits personal funds to correct the deficiency within 15 calendar days of the closing date of that bank statement.

d. Money held in the trust account, which becomes due and payable to the broker, is promptly withdrawn by the broker.

e. The broker cannot use the trust account as a business operating account or for personal use. Commissions, salaries, related items and normal business expenses are not disbursed directly from the trust account.

13.1(2) As authorized by Iowa Code section 543B.46(1), all interest earned on the trust account is transferred on a calendar quarter basis to the state. The amount to be remitted to the state will be the amount of interest earned less any service charges directly attributable to the criteria of maintaining an interest-bearing account and of remitting the interest to the state. The broker may have the depository remit the interest directly or the broker may remit the interest but, in either case, it is the responsibility of the broker to see that the interest is remitted.

a. If the interest is remitted by the broker, the broker should use the commission-approved Real Estate Interest Remittance Form and include a copy of the applicable bank statement(s) showing the interest paid and the service charges attributable to maintaining the account.

b. If the interest is remitted by the broker, the broker mails the interest remittance check and mandatory documentation to:

The State of Iowa
c/o Bankers Trust Company

P.O. Box 4686
Des Moines, Iowa 50306

c. The depository should use the name “Iowa Finance Authority” and the federal tax identification number (TIN) 52-1699886 on the 1099 reporting form when reporting interest to the IRS.

d. The depository should send the 1099 reporting form to:

Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312

e. If the property management or rental account is interest-bearing, the interest is transferred on a calendar quarter basis to the state unless there is a written agreement paying the interest to the property owner.

f. A broker enters into a written agreement to pay interest to a buyer or seller in a transaction, or to a third party if requested by the parties to the contract and agreed to by the broker, if the client’s trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the broker takes into consideration all relevant factors including the following:

(1) The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited;

(2) The cost of establishing and administering an individual interest-bearing trust account in which the interest would be transmitted to the client, including any needed tax forms; and

(3) The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

13.1(3) With disclosure to and the written agreement of all parties, a trust account may bear interest to be disbursed to (1) the buyer or seller involved in a real estate purchase, sale or exchange transaction, or (2) the property owner, if the property management or rental contract contains this specific provision, or (3) as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), or (4) a third party if requested by the parties to the contract and agreed to by the broker. Disbursements of interest on trust funds are subject to all provisions of law that obligate a broker to safeguard and account for the handling of funds of others.

13.1(4) Receipts from property management and rental account transactions may be deposited in a trust account separate from real estate transaction funds. If separately maintained, this account does not need to be an interest-bearing account.

a. The broker provides to the broker’s client a complete accounting of all moneys received and disbursed from the trust account(s) not less often than annually.

b. A broker may only utilize a separate property management or rents trust account for those moneys received by a broker pursuant to a written property management or rental agreement.

13.1(5) A broker is needed to open and maintain one or more trust accounts if the broker is in the practice of depositing funds in a trust account. For each separate trust account opened, the broker files with the commission a written Consent to Examine and Audit Trust Account form, which irrevocably authorizes the commission to examine and audit the trust account. The form of consent is prescribed by and available from the commission and includes the account names and number and the name and address of the depository.

a. If the broker is not in the practice of depositing trust funds in a trust account, the broker files an affidavit with the commission on a form prescribed by and available from the commission.

b. If trust funds are received by the broker after filing an affidavit, the broker immediately opens a trust account and files the appropriate Consent to Examine and Audit Trust Account form with the commission.

c. As provided by Iowa Code section 543B.46(3), a consent to examine is not necessary for a separate farm business operating account or a separate property management account.

13.1(6) Each broker obligated to maintain a trust account maintains at all times a record of each account, as mandated by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

(1) For receipts, the journal for each trust account includes the date, name of depositor, the check number and the amount deposited, and the name of principal or identify the property.

(2) For disbursements, the journal for each trust account includes the date, name of payee, name of principal or identify the property, the check number and the amount disbursed.

(3) The journal provides a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

b. Real estate sales transactions additionally need an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transaction and clearly separates the transaction from all others. The individual ledger account includes the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

c. Property management trust account records additionally include an individual ledger account for each tenant, identifying the tenant's rental unit and security deposit and including all receipts and disbursements together with check number and date. The journal for each account is maintained as an owner's ledger account for all properties owned by each owner showing receipts and disbursements applicable to each property managed.

(1) All disbursements are documented by bids, contracts, invoices or other appropriate written documentation.

(2) The running balance may be determined at the time of monthly reconciliation.

d. Trust account supporting documents include, but are not limited to, the following:

(1) Bank statements;

(2) Canceled checks;

(3) Copies of contracts, listing, sales, rental and leasing;

(4) Closing statements;

(5) Pertinent correspondence; and

(6) Any additional items necessary to verify or explain an entry.

13.1(7) Funds, including interest on trust funds, are only disbursed from the trust account as provided in Iowa Code section 543B.46(1) and by the terms and conditions of the contract or escrow agreement. No funds are disbursed from the trust account prior to the closing, or other than as provided by the terms of the escrow agreement, without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of an earnest money deposit or the disbursement of an escrow deposit held by a broker, the broker continues to hold the deposit in the trust account until one of the following conditions is met:

a. The broker is in receipt of a written release from all parties to the transaction consenting to the disposition of the deposit or escrow funds; or

b. The broker is in receipt of a final judgment of the court directing the disposition of the deposit or escrow funds; or

c. There is a final decision of a binding alternative dispute resolution process, or mediation directing the disposition of the deposit or escrow funds; or

d. A civil court action is filed by one or more of the parties to determine the disposition of the deposit or escrow funds, at which time the broker may seek court authorization to pay the deposit or escrow funds into court.

13.1(8) No funds are disbursed from the trust account prior to the closing without the informed written consent of all the parties to the transaction as provided in subrule 13.1(7), except in accordance with this rule. Nothing in this rule obligates a broker to remove money from the broker's trust account when the disposition of such money is disputed by the parties to the transaction. The commission will not take disciplinary action against a broker who in good faith disburses trust account moneys pursuant to this rule.

a. In the absence of a pending civil court action or written agreement, it is not grounds for disciplinary action when, upon passage of 30 days from the date of the dispute, a broker disburses the earnest money deposit to a buyer, renter, or lessee in a transaction based upon a good faith decision that a contingency has not been met, but disbursement is made only after the broker has given 30 days'

written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and the grounds for the decision.

b. In the absence of a pending civil action or written agreement, it is not grounds for disciplinary action when, upon passage of six months from the date of the dispute, a broker disburses the earnest money deposit to a seller or landlord in a transaction based upon a good faith decision that the buyer, renter, or lessee has failed to perform as agreed, but disbursement is made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and grounds for the decision.

c. If a buyer or seller, or a landlord or lessee, or a renter demands the return of the earnest money deposit, the broker consults with the other party who may agree or disagree with the return.

13.1(9) Under no circumstances is the broker entitled to withhold any portion of the earnest money when a transaction fails to consummate even if a commission is earned. The earnest money is disposed of as provided in subrule 13.1(7), 13.1(8), or 13.1(10), and the broker pursues any claim for commission or compensation against the broker's client.

13.1(10) Interpleader. Anytime the broker in good faith believes that the parties disputing the return of the deposit will not agree on the disposition of the deposit or file a civil court action to determine the disposition of the deposit, then the broker may elect to file an interpleader action with the appropriate court pursuant to Iowa Rules of Civil Procedure and pay the deposit into court. The broker may, in filing such an interpleader court action:

a. Attempt to claim a part of the deposit pursuant to the listing contract with the seller, if the seller is successful in the suit.

b. Disclaim any part of the deposit and request the court to restrain the buyer and the seller from naming the broker in the civil suit and order them to litigate their claims to the deposit.

13.1(11) A trust account may bear interest to be disbursed to the buyers or sellers or to a third party if requested by the parties to the contract and agreed to by the broker with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account is a separate account from the account(s) which is to accrue interest to the state. Interest is disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed to in the management contract and is properly accounted for on closing statements. A broker does not disburse interest on trust funds except as provided in subrules 13.1(3) and 13.1(7). Service charges for the account are a business expense of the broker and are not deducted from the proceeds.

13.1(12) Property management account funds may be withdrawn at any time for the purpose of returning the funds to the payee in accordance with the terms of the contract or receipt.

13.1(13) Property management funds may be withdrawn when and if the broker reasonably believes, from evidence available, that the tenant has obtained a rental or lease through information supplied by or on behalf of the broker.

13.1(14) Trust funds that are not traceable to any individual for disbursement from the trust account are unclaimed property. In accordance with Iowa Code chapter 556, after three years, unclaimed trust funds are reported and remitted to the Treasurer, State of Iowa, Unclaimed Property Division.

193E—13.2(543B) Closing transactions. It is mandatory for every broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. Also, the broker at the same time delivers to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the same were disbursed.

13.2(1) In the event all funds being held by the broker for a transaction cannot be disbursed at the time of closing, the broker obtains an escrow agreement signed by both parties to the transaction which directs the broker regarding the future disbursement of the funds.

13.2(2) The broker retains all trust account records and a complete file, which includes but is not limited to the records mandated by rule 193E—13.5(543B), on each transaction for a period of at least

five years after the date of the closing. Records mandated by this rule may be retained as an electronic record as provided by rule 193E—13.5(543B).

13.2(3) The listing broker is responsible for the closing even though the closing may be completed by another licensee.

13.2(4) If the closing transaction is handled through an unlicensed escrow agent and the escrow agent renders a closing statement, the listing broker ensures that funds which the broker has received or paid as part of the transaction are accounted for properly.

13.2(5) In the case of a cooperative sale between brokers, the listing broker may elect to close the transaction or, by prior agreement, authorize the selling broker to close.

a. If the listing broker so elects, the selling broker has the buyer make the earnest money check or money order payable to the listing broker and immediately delivers the earnest money check or money order along with the offer to purchase to the listing broker or listing agent.

b. Unless by prior agreement the listing broker has authorized the selling broker to close, the offer to purchase designates that the earnest money is held in trust by the listing broker.

c. Unless by prior agreement the listing broker has authorized the selling broker to close, when cash is accepted as earnest money by the selling agent, the selling agent deposits the money in the selling broker's trust account in accordance with commission rules, and then immediately transfers the earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust account.

13.2(6) Any means other than cash or an immediately cashable check are not accepted as earnest money unless that fact is communicated to the seller prior to the acceptance of the offer to purchase, and is stated in the offer to purchase.

13.2(7) Brokers acting as agents for the buyer in a specific real estate transaction have the same criteria for retention of copies as stated in this rule, except that a buyer's agent who is not a party to the listing contract is not obligated to retain a copy of the listing contract or the seller's settlement statement.

13.2(8) Iowa Court Rule 37.5, limited real estate practice. All Iowa real estate licensees should be aware that Iowa Court Rule 37.5 authorizes nonlawyers to select, prepare, and complete certain legal documents incident to residential real estate transactions of four units or less. The preparation of documents beyond that authorized by this court rule may constitute the unauthorized practice of law.

193E—13.3(543B) Salesperson cannot handle closing. A salesperson cannot handle the closing of any real estate transaction except under the direct supervision or with the consent of the employing broker.

193E—13.4(543B) Consent to return earnest money not necessary. When an offer to purchase is withdrawn or the acceptance is revoked without liability pursuant to Iowa Code chapter 558A, any earnest money deposit is promptly returned to the buyer without delay. The seller's consent and agreement to release the funds is not necessary. A copy of the written revocation or withdrawal is retained with the trust account supporting documents.

193E—13.5(543B) File record keeping. Every broker retains for a period of at least five years true copies of all business books; accounts, including voided checks; records; contracts; closing statements; disclosures; signed documents; the listing; any offers to purchase; and all correspondence relating to each real estate transaction that the broker has handled and each property managed. The records are made available for reproduction and inspection by the commission, staff, and commission-authorized representatives at all times during usual business hours at the broker's regular place of business. If the brokerage closes, the records are made available for reproduction and inspection by the commission, staff, and commission-authorized representatives upon request.

13.5(1) Contracts and other documents that have been changed or altered to the point where the language is unreadable and faxed contracts and documents in which the language is unreadable are not acceptable records and are redrafted and signed by the parties.

13.5(2) Copies of unreadable documents are not acceptable as true copies of the originals regardless of the medium.

13.5(3) Electronic records. The files, records, and other documents mandated by this chapter may be stored in electronic format for convenience and efficiency in a system for electronic record storage, analysis, and retrieval.

a. A record obligated by this chapter may be retained as an electronic record only if the record storage medium can be easily accessed and the records can be readily retrieved and transferred to a legible printed form upon request.

b. The scanning or electronic generation of a record is monitored to ensure that the copy is clear, legible and true before the original is shredded.

c. Once the original record is transferred to the appropriate electronic storage medium consistent with this rule, the commission will no longer need the retention of the record in its original medium. For the purposes of this chapter, electronic records are considered the same as originals.

193E—13.6(543B) Licensee acting as a principal. When a licensee is acting in the capacity of a real estate broker, broker associate or salesperson and is also a principal in the sale, lease, rental or exchange of property owned by the licensee, all payments, rent, or security deposits received from the lessee, renter or buyer are deposited into the broker's trust account. The use of the broker's trust account is not needed if all of the following exist:

1. The sale, rental, or exchange is strictly, clearly and completely a "by owner" transaction and there is not a listing or brokerage agreement;
2. No commission or other compensation is paid to or received by the licensee; and
3. The licensee does not function throughout the transaction in any capacity requiring a real estate license.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 14
“Seller Property Condition Disclosure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to provide criteria for the seller’s property condition disclosure. The disclosure is required to be provided by the seller to the purchaser on each transaction pursuant to Iowa Code chapter 558A. This rule provides guidelines for when the disclosure must be provided, the licensee’s duties in representing the seller or buyer in a transaction and the required information that must be stated on the disclosure.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs imposed by this proposed rule. Licensees must comply with this rule. However, a high cost to the public could occur without the regulation of this chapter. Staff salaries to support the work of the Real Estate Commission (Commission) are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees benefit from this proposed rulemaking by having a uniform disclosure statement and requirements for all transactions. The public benefits from this rulemaking by ensuring sellers are disclosing the accurate condition of their property to potential buyers. The rule provides standards of practice for a licensee to ensure the licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing it is receiving quality services in this industry.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

It is difficult to quantify the costs imposed on licensees through the time and effort necessary to comply with this proposed rule. The public could bear a high cost without this chapter.

- Qualitative description of impact:

This proposed rule provides protection for the general public. By requiring licensees to ensure the sellers are providing accurate disclosures on the condition of the property, buyers are able to make a knowledgeable decision in buying property.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefits are less restrictive language and consolidation of chapters, which simplify rules to provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

This proposed rule has little to no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in this rule and consolidating chapters where applicable.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods are available for the Commission to consider in this chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no rejections of alternative methods by the Commission for this proposed chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of the proposed chapter. This proposed rule applies to the sale and purchase of property and applies uniformly to all persons and businesses. The risk to the public to not require small businesses to comply with this rule is greater than the potential risk or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14
SELLER PROPERTY CONDITION DISCLOSURE

193E—14.1(543B) Property condition disclosure. The criteria of this chapter applies to transfers of real estate subject to Iowa Code chapter 558A. For purposes of this chapter, “transfer” means the same as Iowa Code section 558A.1(5), and “agent” means the same as Iowa Code section 558A.1(1).

14.1(1) Additional disclosure. Nothing in this rule is intended to prevent any additional disclosure or to relieve the parties or agents in the transaction from making any disclosure otherwise mandated by law or contract.

14.1(2) Licensee responsibilities to seller. At the time a licensee obtains a listing, the listing licensee obtains a completed disclosure signed and dated by each seller represented by the licensee.

a. A licensee representing a seller delivers the executed statement to a potential buyer, a potential buyer’s agent, or any other third party who may be representing a potential buyer, prior to the seller’s making a written offer to sell or the seller’s accepting a written offer to buy.

b. The licensee representing a seller attempts to obtain the buyer’s signature and date of signature on the statement and provides the seller and the buyer with fully executed copies of the disclosure and maintains a copy of the written acknowledgment in the transaction file. If the licensee is unable to obtain the buyer’s signature, the licensee obtains other documentation establishing delivery of the disclosure and maintains the written documentation in the transaction file.

c. If the transaction closes, the listing broker maintains the completed disclosure statement for a minimum of five years.

d. The executed disclosure statement is delivered to the buyer(s) or the buyer’s agent in accordance with Iowa Code section 558A.2(2). If there is more than one buyer, any one buyer or buyer’s agent may accept delivery of the executed statement.

14.1(3) Licensee responsibilities to buyer. A licensee representing a buyer in a transfer notifies the buyer of the seller’s obligation to deliver the property disclosure statement.

a. If the disclosure statement is not delivered when mandated, the licensee notifies the buyer that the buyer may revoke or withdraw the offer and follows Iowa Code section 558A.2(2).

b. Reserved.

14.1(4) Inclusion of written reports. A written report or opinion prepared by a person qualified to render the report or opinion may be included in a disclosure statement. A report may be prepared by those authorized by Iowa Code section 228A.4(1) “b.”

a. The seller identifies the necessary disclosure items which are to be satisfied by the report.

b. If the report is prepared for the specific purpose of satisfying the disclosure criteria, the preparer of the report follows Iowa Code section 558A.4(1) “b.”

c. A licensee representing a seller provides the seller with information on the proper use of reports if reports are used as part of the disclosure statement.

14.1(5) Amended disclosure statement. A licensee’s obligations with respect to any amended disclosure statement are the same as the licensee’s obligations with respect to the original disclosure statement. A disclosure statement is amended if authorized by Iowa Code section 558A.3(2).

14.1(6) Acknowledgment of receipt of disclosure statement by electronic means. Whether or not a licensee assists in a real estate transaction, electronic delivery of any property disclosure statement mandated by Iowa Code chapter 558A is not deemed completed until written acknowledgment of receipt is provided to the transferor by the transferee or the transferee’s agent. Acceptable acknowledgment of

receipt includes return of a fully executed copy of the property disclosure statement to the transferor by the transferee or the transferee's agent; or a letter, electronic mail, text message, or other written correspondence to the transferor from the transferee or the transferee's agent acknowledging receipt. A computer-generated read receipt, facsimile delivery confirmation, or other automated return message is not deemed acknowledgment of receipt for purposes of this rule.

14.1(7) Minimum disclosure statement contents for all transfers. All property disclosure statements, whether or not a licensee assists in the transaction, contain at a minimum the information mandated by the following sample statement. No particular language is necessary in the disclosure statement provided that the necessary disclosure items are included and the disclosure complies with Iowa Code chapter 558A. To assist real estate licensees and the public, the commission recommends use of the following sample language:

RESIDENTIAL PROPERTY SELLER DISCLOSURE STATEMENT

Property address: _____

PURPOSE:

Use this statement to disclose information as mandated by Iowa Code chapter 558A. This law obligates certain sellers of residential property that includes at least one and no more than four dwelling units to disclose information about the property to be sold. The following disclosures are made by the seller(s) and not by any agent acting on behalf of the seller(s).

INSTRUCTIONS TO SELLER(S):

1. Seller(s) completes this statement. Respond to all questions, or attach reports allowed by Iowa Code section 558A.4(2);
 2. Disclose all known conditions materially affecting this property;
 3. If an item does not apply to this property, indicate that it is not applicable (N/A);
 4. Please provide information in good faith and make a reasonable effort to ascertain the necessary information. If the necessary information is **unknown** or is **unavailable** following a reasonable effort, use an **approximation** of the information, or indicate that the information is **unknown (UNK)**. All **approximations** are identified as **approximations (AP)**;
 5. Additional pages may be attached as needed;
 6. Keep a copy of this statement with your other important papers.
1. Basement/Foundation: Any known water or other problems? Yes [] No []
2. Roof: Any known problems? Yes [] No []
- Any known repairs? Yes [] No []
- If yes, date of repairs/replacement: ____/____/____
3. Well and Pump: Any known problems? Yes [] No []
- If N/A check here []
- Any known repairs? Yes [] No []
- If yes, date of repairs/replacement: ____/____/____
- Any known water tests? Yes [] No []
- If yes, date of last report: ____/____/____
- and results: _____
4. Septic Tanks/Drain Fields: Any known problems? Yes [] No []
- If N/A check here []
- Location of tank: _____
- Date tank last cleaned: ____/____/____
5. Sewer System: Any known problems? Yes [] No []
- Any known repairs? Yes [] No []

- If yes, date of repairs/replacement: ___/___/___
6. Heating System(s): Any known problems? Yes [] No []
 Any known repairs? Yes [] No []
 If yes, date of repairs/replacement: ___/___/___
7. Central Cooling System(s): Any known problems? Yes [] No []
 Any known repairs? Yes [] No []
 If yes, date of repairs/replacement: ___/___/___
8. Plumbing System(s): Any known problems? Yes [] No []
 Any known repairs? Yes [] No []
 If yes, date of repairs/replacement: ___/___/___
9. Electrical System(s): Any known problems? Yes [] No []
 Any known repairs? Yes [] No []
 If yes, date of repairs/replacement: ___/___/___
10. Pest Infestation (e.g., termites, carpenter ants): Any known problems? Yes [] No []
 If yes, date(s) of treatment: ___/___/___
 Any known structural damage? Yes [] No []
 If yes, date(s) of repairs/replacement: ___/___/___
11. Asbestos: Any known to be present in the structure? Yes [] No []
 If yes, explain: _____
12. Radon: Any known tests for the presence of radon gas? Yes [] No []
 If yes, date of last report: ___/___/___
 and results: _____
13. Lead-Based Paint: Any known to be present in the structure? Yes [] No []
14. Flood Plain: Do you know if the property is located in a flood plain? Yes [] No []
 If yes, what is the flood plain designation? _____
15. Zoning: Do you know the zoning classification of the property? Yes [] No []
 If yes, what is the zoning classification? _____
16. Covenants: Is the property subject to restrictive covenants? Yes [] No []
 If yes, attach a copy or state where a true, current copy of the covenants can be obtained:

17. Shared or Co-Owned Features: Any features of the property known to be shared in common with adjoining landowners, such as walls, fences, roads, and driveways whose use or maintenance responsibility may have an effect on the property? Yes [] No []
 Any known "common areas" such as pools, tennis courts, walkways, or other areas co-owned with others, or a Homeowner's Association which has any authority over the property? Yes [] No []
18. Physical Problems: Any known settling, flooding, drainage or grading problems? Yes [] No []
19. Structural Damage: Any known structural damage? Yes [] No []

You need to explain any "YES" response(s) above. Use the back of this statement or additional sheets as necessary: _____

SELLER(S) DISCLOSURE:

Seller(s) discloses the information regarding this property based on information known or reasonably available to the Seller(s).

The Seller(s) has owned the property since ____/____/____. The Seller(s) certifies that as of the date signed this information is true and accurate to the best of my/our knowledge.

Seller(s) acknowledges that Buyer(s) be provided with the "Iowa Radon Home-Buyers and Sellers Fact Sheet" prepared by the Iowa Department of Public Health.

Seller_____ Seller_____

Date ____/____/____ Date ____/____/____

BUYER(S) ACKNOWLEDGMENT:

Buyer(s) acknowledges receipt of a copy of this Real Estate Disclosure Statement. This statement is not intended to be a warranty or to substitute for any inspection Buyer(s) may wish to obtain.

Buyer(s) acknowledges receipt of the "Iowa Radon Home-Buyers and Sellers Fact Sheet" prepared by the Iowa Department of Public Health.

Buyer_____ Buyer_____

Date ____/____/____ Date ____/____/____

This rule is intended to implement Iowa Code chapters 17A, 272C, 543B, and 558A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 15
“Property Management”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

The purpose of this proposed rule is to provide property management guidelines for individuals who are renting property. This rule provides education on the property management laws and policies to enforce the management laws. This rule only applies to the owner of the property. Tenants are covered under a separate chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:
Property managers and licensees may incur costs to implement and comply with this rule.
- Classes of persons that will benefit from the proposed rulemaking:

This proposed rule benefits the general public by providing a rule and enforcement over property managers to ensure the public receives reputable services when renting property. This rule also benefits property managers by ensuring that property managers have a standard guideline to follow to ensure public safety and welfare.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:
Property managers will likely incur costs to comply with this proposed rule and ensure their property meets the standards required.
- Qualitative description of impact:

There is a high cost to the public when property management is not regulated. This proposed chapter ensures public protection by allowing the Real Estate Commission (Commission) to implement and enforce rules applicable to property management.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues. The costs of this proposed chapter are borne primarily by the property managers. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed chapter costs the public little to nothing. Property managers may incur some additional costs to comply with the chapter. However, the negative impact on the public would be much greater than any cost to the property managers if the Commission did not implement this rule. The rule merely sets out requirements that likely are already in place by most property managers.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

This rule has little to no cost implication. The Commission has not identified a less intrusive method for regulating property managers.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None in this chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Commission has not identified a less restrictive alternative.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of the proposed chapter. This proposed rule provides guidelines for property managers to follow when renting or leasing property. This rule has a great impact on the general public. Without this rule, the public could be harmed. It does not matter if the property manager is a large corporation or a small business; the public needs to be protected. If the small business had difficulty following these provisions, the small business could apply for a waiver from the rule.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
PROPERTY MANAGEMENT

193E—15.1(543B) Property management. A licensee cannot rent or lease real estate, offer to rent or lease real estate, negotiate or offer or agree to negotiate the rental or leasing of real estate, list or offer to list real estate for the leasing or rental of real estate, assist or direct in the negotiation of any transaction calculated or intended to result in the leasing or rental of real estate or show property to prospective renters or lessees of real estate unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

15.1(1) Every property management agreement or other written authorization between a broker and an owner of real estate includes, but is not limited to, the following:

- a. Proper identification of the property to be managed.
- b. All terms and conditions under which the property is to be managed and the powers and authority given to the broker by the owner.
- c. Terms and conditions under which the broker will remit property income to the owner and when the broker will provide periodic written statements of property income and expenses to the owner, which is done no less than annually.
- d. Which payments of property-related expenses are to be made by the broker to third parties.
- e. Amount of fee or commission to be paid to the broker and when it will be paid.
- f. Amount of security deposits and prepaid rents to be held by the broker or the owner.
- g. Effective date of the agreement.
- h. Terms and conditions for termination of the property management agreement by the broker or the owner of the property.
- i. Signatures of the broker and owner or the owner's authorized agent.

15.1(2) The licensee gives the owner or the owner's authorized agent a legible copy of every written property management agreement or written authorization at the time the signature of the owner is obtained, and the licensee's broker retains a copy.

15.1(3) A licensee who is managing the leasing or rental of real estate may act as an agent in the sale or exchange of that real estate only if the property management agreement clearly grants the specific authorization and contains all of the necessary elements for a listing as set forth in rule 193E—11.1(543B) or if a separate listing agreement is secured.

15.1(4) The broker deposits all funds received on behalf of the owner, by no later than five banking days after receipt of the funds, into a trust account maintained by the broker, under the broker's control and in compliance with Iowa Code section 543B.46 and rule 193E—13.1(543B).

15.1(5) If the property management agreement is terminated or transferred for any reason, the property manager:

- a. Terminates the management activities of the property as provided in the agreement and except as otherwise provided by the agreement;
- b. Notifies the owner and any tenants of the property of the termination;
- c. Provides the owner, not later than 30 days after the effective date of the termination, with any unobligated funds due the owner under the agreement and not later than 60 days after the effective date of

the termination, provides the owner with a final accounting of the owner's ledger account, the amount of any obligated funds held in the property manager's client trust account under the agreement, a statement that explains why obligated funds are being held by the property manager and a statement of when and to whom the obligated funds will be disbursed by the property manager;

d. May disburse any unobligated funds only to the owner or, with the proper written authorization of the owner, to another property manager designated in writing by the owner;

e. Immediately notifies each tenant that the conditionally refundable deposit will be transferred to the owner or to a new property manager and, at the same time, provides the name and address of the owner or the new property manager to whom these deposits will be transferred.

15.1(6) If any of the unobligated funds held by the property manager under the terminated agreement represent tenants' conditionally refundable deposits received from current tenants, the property manager:

a. Cannot expend any tenant's conditionally refundable deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreements, and

b. If any tenant terminates tenancy at the same time as or prior to the termination of the management of the rented or leased property, the licensee completes any final accounting, inspection or other procedure obligated by the tenant's rental or lease agreement, by the Uniform Residential Landlord and Tenant Law, Mobile Home Parks Residential Landlord and Tenant Law, or by the property management agreement, unless the owner directs otherwise in writing.

15.1(7) Financial dealings under a property management agreement are conducted subject to the following:

a. A check is not issued or presented for payment prior to sufficient funds being in the owner's account to cover the check.

b. Transfers of funds between two or more accounts maintained for the same owner may be made if proper entries are made on the ledgers of the accounts affected and the broker maintains the specific written authorization of the owner.

Transfers of funds between an individual owner's accounts are done by writing billings and receipts debiting and crediting the appropriate accounts. Transfers are not done by ledger entries alone.

c. The broker cannot withdraw, pay or transfer money from the owner's account in excess of the remaining credit balance at the time of withdrawal, payment or transfer.

d. Management fees are withdrawn from the owner's account at least once a month unless the agreement provides otherwise. The fees are identified by property name or account number for which the fees were earned and withdrawn by the broker and deposited into the broker's business operating account. Fees are not paid directly from the owner's trust account to the broker.

e. Conditionally refundable deposits are placed in a trust account until refund is made or until all or a portion of the deposit accrues to the owner under the tenant's agreement.

If refundable deposits are not maintained in a separate trust account, the running balance of the account does not, at any time, go below the total of the refundable deposits being held in the account.

f. The total of balances of the individual property management accounts of the broker equals the balance shown on the journal, the account ledgers, and the reconciled bank balance of the broker.

All accounts and records are in compliance with Iowa Code section 543B.46 and rule 193E—13.1(543B).

g. Except as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), if refundable deposits and funds are received from others pursuant to a property management agreement, deposited in an interest-bearing trust account, and there is not a separate written agreement to pay the interest earned to the owner or tenant, the interest is paid to the state pursuant to Iowa Code section 543B.46. The property manager does not receive or benefit from the interest.

The written approval agreement is signed by each party having an interest in the funds, fully disclosing how the funds are to be handled by the property manager, who will benefit from the interest earnings, how and when interest earnings will be paid and any limitations that may be provided for on the withdrawal of the funds deposited in the interest-bearing trust account.

This rule is intended to implement Iowa Code chapters 17A, 272C, and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 16
“Prelicense Education and Continuing Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

These proposed rules set education and continuing education requirements for real estate licensees. The rules include definitions related to prelicensing, continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of education that are permissible. The intended benefit of the prelicensing and continuing education is to ensure that real estate licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of prelicensing, continuing education, examinations and background checks. Private industry offers these courses, so the Real Estate Commission (Commission) is not privy to the exact costs, but research estimates it to be around \$500 to \$700 for initial licensure and \$500 for the cost of continuing education every three years.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of continuing education is to ensure that real estate licensees maintain initial and up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Private industry, including but not limited to educational institutions, professional associations and businesses, offer these courses, so the Commission is not privy to exact costs of education or continuing education. Based on research, it is estimated to be around \$500 to \$700 for initial licensing and \$500 every three years for renewal/continuing education. There are multiple entities that provide these education requirements to licensees.

The Commission does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires real estate salespersons to complete 60 hours of prelicensing courses and three 12-hour courses and 36 hours of continuing education every three years. Iowa requires real estate brokers to complete the same requirements as the salesperson, plus 60 hours of broker courses and 36 hours of continuing education every three years. Research shows that Iowa's requirements on education are comparable to surrounding states. South Dakota and Illinois have more types of licenses and require more continuing education than Iowa. Nebraska requires slightly less education than Iowa but requires that the licensee renew the licensee's license more frequently than Iowa requires.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards and practices and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held as is evidenced by the fact that most other boards around the country require some form of education and continuing education. The Commission believes the current prelicense and continuing education requirements are justified and ensure that the real estate licensee who is dealing with the public on a large investment is educated and up-to-date on the real estate laws, ethics and business practices.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing initial licensing education and continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact from these proposed rules on state revenues.

Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating continuing education hours would reduce/eliminate the cost to a licensee to meet this requirement. The Commission believes there could be a negative impact to the public if continuing education requirements were eliminated. This could lead to more complaints, investigations, and, ultimately, public discipline.

There would be a loss of revenue for the private industry organizations that offer these education courses if these requirements were reduced or eliminated.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be to reduce or eliminate the amount of prelicense education and continuing education requirements. A review of the surrounding states shows that Iowa's current requirements are in line with other states' requirements for similar licensees.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Commission considered the alternatives of eliminating or lowering the number of prelicense and continuing education hours.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Commission believes there could be a negative impact to the public if continuing education requirements were eliminated. This could lead to more complaints, investigations, and, ultimately, public discipline.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of this rulemaking. Real estate licensees practice in a number of settings, including small businesses, self-employment, corporations, and large agencies. The cost of prelicensing and continuing education could be greater for small business owners since they would be responsible for the entire cost. If individual licensees found a requirement to be overly burdensome, the licensee could utilize the established waiver process to request a waiver from the requirement.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16 PRELICENSE EDUCATION AND CONTINUING EDUCATION

193E—16.1(543B) Definitions. For the purpose of these rules, the following definitions apply:

“*Affirmative marketing*” means the entire scope of social laws and ethics that are concerned with civil rights as they apply especially to housing and to the activities of real estate licensees.

“*Approved program, course, or activity*” means a continuing education program, course, or activity meeting the standards set forth in these rules which has received advance approval by the commission pursuant to these rules.

“*Approved provider*” means a person or an organization that has been approved by the commission to conduct continuing education activities pursuant to these rules.

“*Broker*” means any person holding an Iowa real estate broker license as defined in Iowa Code section 543B.3.

“*Commission*” means the real estate commission.

“*Continuing education*” means education needed as a condition to license renewal.

“*Credit hour*” means the value assigned by the commission to a prelicense or continuing education program, course, or activity.

“*Distance learning*” or “*online learning*” means a planned teaching/learning experience with a geographic separation of student and instructor that utilizes a wide spectrum of technology-based systems, including computer-based instruction, to reach learners at a distance. Home-study courses that include written materials, exercises and tests mailed to the provider for review are included in this definition.

“*Guest speaker*” means an individual who teaches a real estate education course on a one-time-only or very limited basis and who possesses a unique depth of knowledge and experience in the subject matter the individual proposes to teach.

“*Hour*” means 50 minutes of instruction.

“*Inactive license*” means the same as Iowa Code section 543B.5(12).

“*Licensee*” means the same as Iowa Code section 543B.5(13).

“*Live instruction*” means an educational program delivered in a traditional classroom setting or by electronic means whereby the instructor and student have real-time visual and audio contact to carry out their essential tasks.

“*Prelicense course*” means instruction consisting of one or more courses meeting the criteria of Iowa Code section 543B.15.

“*Salesperson*” means any person holding an Iowa real estate salesperson license as defined in Iowa Code section 543B.5(3).

193E—16.2(543B) Salesperson prelicense criteria.

16.2(1) *Mandatory course of study.*

a. The mandatory course of study for the salesperson licensing examination consists of 60 live instruction or distance/online learning hours of real estate principles and practices to comply with the criteria of Iowa Code section 543B.15. The curriculum includes, but is not limited to, the following subjects:

| | |
|---|----------|
| Introduction to Real Estate and Iowa License Law | 12 hours |
| Ownership, Encumbrances, Legal Descriptions, Transfer of Title and Closing | 12 hours |
| Contracts, Agency and Antitrust | 12 hours |
| Valuation, Finance and Real Estate Math | 12 hours |
| Property Management/Leasing, Fair Housing, Environmental Risks and Health Issues | 12 hours |

b. At the time of submission of an application, an applicant applying for an original salesperson license also provides evidence of the following live instruction courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. All the necessary education is completed during the 12 months prior to the date the application is postmarked or received.

16.2(2) *Completion of prelicense education.* Successful completion of the salesperson prelicense education includes passage of an examination(s) designed by the approved provider that is sufficiently comprehensive to measure the student’s knowledge of all aspects of the course(s). Times allotted for examinations may be regarded as hours of instruction.

16.2(3) *Substitution of courses.* Written requests for substitution of the salesperson prelicense education courses specified in subrule 16.2(1) may be granted if the applicant submits evidence of successful completion of a course or courses which are substantially similar to the courses specified in subrule 16.2(1). Courses completed more than 12 months prior to commission consideration for approval do not qualify for substitution.

193E—16.3(543B) Broker prelicense education criteria.

16.3(1) *Mandatory course of study.* The mandatory course of study to take the broker examination consists of Iowa Code section 543B.15(7). Approved courses include the following subjects:

| | |
|---|---------|
| Contract Law and Contract Writing | 6 hours |
|---|---------|

| | |
|---|----------|
| Iowa Real Estate Trust Accounts. | 6 hours |
| Principles of Appraising and Market Analysis. | 6 hours |
| Real Estate Law and Agency Law | 6 hours |
| Real Estate Finance | 6 hours |
| Federal and State Laws Affecting Iowa Practice | 6 hours |
| Real Estate Office Organization, Administration and Human Resources | 12 hours |
| Real Estate Technology and Data Security. | 6 hours |
| Ethics and Safety Issues for Brokers. | 6 hours |

16.3(2) Completion of prelicense education. Successful completion of the broker prelicense education includes passage of an examination(s) designed by the approved provider that is sufficiently comprehensive to measure the student’s knowledge of all aspects of the course(s). Times allotted for examinations may be regarded as hours of instruction.

16.3(3) Substitution of courses. Written requests for substitution of the broker prelicense education courses specified in subrule 16.3(1) may be granted if the applicant submits evidence of successful completion of a course or courses which are substantially similar to the courses specified in subrule 16.3(1). Any course completed more than 24 months prior to commission consideration for approval does not qualify for substitution.

193E—16.4(543B) Continuing education criteria.

16.4(1) All individual real estate licenses are issued for three-year terms, counting the remaining portion of the year of issue as a full year. All individual licenses expire on December 31 of the third year of the license term.

16.4(2) As a criteria of license renewal in an active status, each real estate licensee completes a minimum of 36 hours of approved programs, courses or activities. The continuing education is completed during the three calendar years of the license term and cannot be carried over to another license renewal term. Approved courses in the following subjects are completed to renew a license to active status:

| | |
|---------------------|----------|
| Law Update. | 8 hours |
| Ethics | 4 hours |
| Electives | 24 hours |

16.4(3) During each three-year renewal period a course may be taken for credit only once. A course may be repeated for credit only if the course numbers and instructors are different.

16.4(4) A maximum of 24 hours of continuing education may be taken by distance/online learning each three-year renewal period.

16.4(5) A licensee unable to attend educational offerings because of a disability may make a written request to the commission setting forth an explanation and verification of the disability. Licensees making requests need to meet the definition of a person with a disability found in the Americans with Disabilities Act as amended by the ADA Amendments Act of 2008 (ADAAA).

16.4(6) In addition to courses approved directly by the commission, the following will be deemed acceptable as continuing education:

- a. Credits earned in a state which has a continuing education criteria for renewal of a license if the course is approved by the real estate licensing board of that state for credit for renewal. However, state-specific courses are not acceptable.
- b. Courses sponsored by the National Association of Realtors (NAR) or its affiliates.

193E—16.5(543B) Continuing education records. Applicants for license renewal pursuant to Iowa Code section 543B.15 certify that the number of hours of continuing education needed to renew a license was completed as described in rule 193E—16.4(543B).

16.5(1) The commission will verify by random audit or on a test basis the education claimed by the licensee. It is the responsibility of the licensee to maintain records that support the continuing education claimed and the validity of the credits. Documentation is retained by the licensee for a period of three years after the effective date of the license renewal.

16.5(2) It will not be acceptable for a licensee to include on a renewal application continuing education which has not yet been completed, is outside the renewal period, or for which prior approval or postapproval has not been previously granted.

16.5(3) Failure to provide necessary evidence of completion of claimed education within 30 days of the written notice from the commission results in the licensee's being placed on inactive status. Prior to activating a license that has been placed on inactive status pursuant to this provision, the licensee submits to the commission satisfactory evidence that all necessary continuing education has been completed.

16.5(4) Filing a false affirmation is prima facie evidence of a violation of Iowa Code section 543B.29(1).

193E—16.6(543B) Reactivating an inactive license. A license may be renewed without the necessary continuing education, but it is only renewed to an inactive status. Prior to reactivating a license that has been issued inactive due to failure to submit evidence of continuing education, the licensee submits evidence that all deficient continuing education hours have been completed. The maximum continuing education hours cannot exceed the prescribed number of hours of one license renewal period and are completed during the three calendar years preceding activation of the license.

193E—16.7(543B) Full-time attendance. Successful completion of continuing education needs full-time attendance throughout the program, course or activity. A student who arrives late, leaves during class or leaves early does not receive a certificate.

193E—16.8(543B) Education criteria for out-of-state licensees. Subrule 16.4(2) applies to every Iowa real estate licensee unless exempted by Iowa Code section 272C.2(5).

193E—16.9(543B) Examination as a substitute for continuing education.

16.9(1) A salesperson may satisfy all continuing education deficiencies by taking and passing the real estate salesperson examination. An authorization letter is obtained from the commission prior to scheduling the examination with the examination administrator.

a. If the salesperson takes and passes the salesperson examination within the six months immediately preceding the expiration of the license, the salesperson examination score report may be substituted for the necessary hours of continuing education credit for the current license term and will satisfy all previous deficiencies.

b. A salesperson who is otherwise qualified to be a broker and who passes the broker licensing examination is not needed to furnish evidence of credit for continuing education earned as a salesperson.

16.9(2) A broker may satisfy all continuing education deficiencies by taking and passing the real estate broker examination. An authorization letter is obtained from the commission prior to scheduling the examination with the examination administrator. If the broker takes and passes the broker examination within the six months immediately preceding the expiration of the license, the broker examination score report may be substituted for the necessary hours of continuing education credits for the current license term and will satisfy all previous deficiencies.

193E—16.10(543B) Use of prelicense courses as continuing education.

16.10(1) Salespersons and brokers may take up to 24 hours of the salesperson prelicense courses specified in subrule 16.2(1) as continuing education. However, a newly licensed salesperson cannot use credits from the salesperson prelicense course(s) to meet the continuing education criteria of the first renewal term.

16.10(2) Broker prelicense courses taken by a salesperson may be applied as continuing education for renewal of the salesperson license and also may be used as prelicense credit to qualify for a broker license.

16.10(3) A broker may take broker prelicense courses as continuing education, but a newly licensed broker cannot use as continuing education credits from the prelicense courses taken to qualify for the broker license.

193E—16.11(543B) Requests for prior approval or postapproval of a course(s). A licensee seeking credit for attendance and participation in a course, program, or other continuing education activity that is to be conducted by a school not otherwise approved by the commission may apply for approval to the commission at least 21 days in advance of the beginning of the activity. The commission approves or denies the application in writing within 14 days of receipt of the application.

16.11(1) The application for prior approval of a course or an activity includes the following information:

- a.* School or organization or person conducting the activity.
- b.* Location of the activity.
- c.* Title and brief description of the activity or title and course outline.
- d.* Credit hours requested.
- e.* Date of the activity.
- f.* Principal instructor(s).

16.11(2) The application for postapproval of a course or an activity includes the following information:

- a.* School, firm, organization or person conducting the activity.
- b.* Location of the activity.
- c.* Title, description of activity, and course outline.
- d.* Credit hours requested for approval.
- e.* Date of the activity.
- f.* Principal instructor(s).
- g.* Verification of attendance.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 17
“Approval of Schools, Courses and Instructors”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter sets forth requirements for instructors, schools, and courses. The rules include information for schools to get approval from the Real Estate Commission (Commission) in order to teach prelicensing classes, continuing education and instructor workshop development courses. The intended benefit of this chapter is to ensure proper education is being made available to licensees and future licensees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for the cost of their continuing education. This proposed chapter would have costs that the schools and instructors will have to bear. However, they are also the ones who will charge for their courses. The Commission does not charge for schools, instructors or course applications. The Commission has researched other jurisdictions, and some commissions do charge for this type of application. The rules for the schools and instructors to follow are important so that people are not taking advantage of the students. Also, having course requirements ensures the students/licensees are learning proper course materials.

- Classes of persons that will benefit from the proposed rulemaking:

Licensees, future licensees, instructors, schools, and the general public. The intended benefit is to ensure real estate licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

No new fees are being imposed, and no economic impact is imposed by the proposed rulemaking. However, private industries, including educational institutions, professional associations, and businesses, offer these courses, so the Commission is not privy to exact costs or changing costs at all times. There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

- Qualitative description of impact:

This proposed chapter makes professional licensing education more accessible and provides a larger pool of schools for Iowans to choose from when seeking educational services. This chapter provides a benefit because it ensures the licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact from these proposed rules on state revenues.

Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees. Reducing or eliminating education would reduce or eliminate the cost to the licensee. However, the Commission is not willing to reduce or eliminate education at this time. The Commission's complaints are too numerous to consider any changes.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking a less intrusive route by removing the restrictive language in the chapter. After comparing education requirements with surrounding states, the Commission feels as though the Commission is in alignment with where the Commission needs to be regarding prelicensure and continuing education.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Commission did discuss a less restrictive alternative; however, the Commission is not willing to sacrifice the safety and well-being of the public to reduce required education.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No Commission member felt as though an alternative method should be applied to this proposed chapter.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Real estate licensees practice in a number of settings, including small businesses, self-employment, corporations and large agencies. The cost of prelicensing and continuing education could be greater for small business owners since they would be responsible for the entire cost.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17
APPROVAL OF SCHOOLS, COURSES AND INSTRUCTORS

193E—17.1(543B) Administrative criteria for schools, courses and instructors. All schools, courses and instructors of prelicense and continuing education receive advance approval of the commission.

17.1(1) Schools, courses and instructors are approved on forms prescribed by the commission for 24-month periods, including the month of approval. Approval is obtained for each course that an instructor proposes to teach.

17.1(2) A course outline and all necessary forms are submitted for approval at least 30 days prior to the first offering of the program, course or activity.

17.1(3) Evidence of compliance with or exemption from Iowa Code sections 714.18 through 714.25 is furnished to the commission.

17.1(4) Potential participants of all approved courses are clearly informed of the hours to be credited, policies concerning registration, payment of fees, refunds and attendance criteria.

17.1(5) School staff and instructors allow access to any classes conducted to any member of the commission or its duly appointed representatives.

17.1(6) No part of any approved course is used to advertise or solicit orally or in writing any product or service.

17.1(7) The school shows that procedures are in place to ensure that the student who completes an approved course is the student who enrolled in the course.

17.1(8) School staff and instructors are available during normal business hours to answer student questions and provide assistance as necessary.

17.1(9) The commission may at any time evaluate an approved school or instructor. If the commission finds there is a basis for consideration of revocation of the approval of the school or the instructor, the commission gives notice by ordinary mail or email to the coordinator of that school or to the instructor of a hearing on the possible revocation at least 20 days prior to the hearing.

17.1(10) The commission may deny or withdraw approval of a program, course, or activity, but the decision to deny or withdraw approval may be appealed within 20 days of the date of mailing the notice of denial or withdrawal.

17.1(11) Each application for approval designates an individual as coordinator for the school in responsible charge of its operation who is also the contact for the commission. The coordinator is responsible for complying with the commission's rules relating to schools and for submitting reports and information if needed by the commission.

17.1(12) An approved school cannot apply to itself either as part of its name or in any other manner the designation of "college" or "university" in such a way as to give the impression that it is an educational institution conforming to the standards and qualifications prescribed for colleges and universities unless the school, in fact, meets those standards and qualifications.

17.1(13) Advertising and prospectus information. No approved school provides any information to the public or to prospective students that is misleading.

17.1(14) Maximum hours of instruction. There is no more than eight classroom hours in any single day of instruction.

17.1(15) Each approved school establishes and maintains for each student a complete, accurate and detailed record of instruction undertaken and satisfactorily completed in the areas of study prescribed by these rules. The records are maintained for a period of not less than five years. The commission assigns a number to each approved school and assigns a number to each approved program, course or activity. The approved school includes these reference numbers in correspondence with the commission and includes these numbers on certificates of attendance issued by the approved school.

193E—17.2(543B) Certificates of attendance.

17.2(1) Each approved school under rule 193E—17.1(543B) provides an individual certificate of attendance to each licensee upon completion of the program, course, or activity. The certificate contains the following information:

- a.* School name and number;
- b.* Program, course or activity name and number;
- c.* Name and address of licensee;
- d.* Date on which the program, course or activity was completed;
- e.* Number of approved credit hours;
- f.* Instructor's name;
- g.* Signature of coordinator or other person authorized by the commission; and
- h.* A notation as to whether credit hours are to be used as distance learning or as live instruction.

17.2(2) An attendance certificate is not issued to a licensee who is absent from a continuing education program, course, or activity. The program, course, or activity is completed in its entirety. A student who arrives late, leaves during class or leaves early does not receive an attendance certificate.

193E—17.3(543B) Instructors taking license examinations for auditing purposes.

17.3(1) Instructors who take the salesperson or broker examination for auditing purposes first obtain written consent from the commission.

17.3(2) Any instructor who wishes to retake an examination for auditing purposes may be granted permission after 12 months have passed.

193E—17.4(543B) Continuing education credit for instructors.

17.4(1) Commission-approved instructors may receive up to six hours of continuing education credit toward renewal of a real estate license for verified attendance at an instructor development workshop approved by the commission. The instructor may use continuing education credit only once in each three-year renewal period.

17.4(2) An instructor may receive continuing education credit for approved education courses that the instructor teaches, but not more than six hours of credit in any three-year license renewal period.

193E—17.5(543B) Acceptable course topics.

17.5(1) The commission will consider courses in the following areas to be acceptable for approval:

- a.* Real estate ethics;
- b.* Legislative issues that influence real estate practice, including both pending and recent legislation;
- c.* The administration of licensing provisions of real estate law and rules, including compliance and regulatory practices;
- d.* Real estate financing, including mortgages and other financing techniques;
- e.* Real estate market analysis and evaluation, including site evaluations, market data, and feasibility studies;
- f.* Real estate brokerage administration, including office management, trust accounts, and employee contracts;
- g.* Real estate mathematics;
- h.* Real property management, including leasing agreements, accounting procedures, and management contracts;
- i.* Real property exchange;
- j.* Land use planning and zoning;
- k.* Real estate securities and syndications;
- l.* Estate building and portfolio management;
- m.* Accounting and taxation as applied to real property;
- n.* Land development;
- o.* Market analysis;
- p.* Real estate market procedures;
- q.* Technology and the practice of real estate;
- r.* Safety;
- s.* Fair housing; and
- t.* Diversity, equity and inclusion.

17.5(2) Other course topics. A course topic may be approved if it is determined that it includes such facts, concepts and current information about which licensees are knowledgeable to conduct real estate negotiations and transactions and better protect client, customer and public interest. The same criteria will be used to evaluate courses that do not otherwise qualify under rule 193E—17.5(543B).

193E—17.6(543B) Nonqualifying courses. The following course offerings do not qualify as continuing education:

17.6(1) Courses of instruction designed to prepare a student for passing the real estate salesperson examination;

17.6(2) Sales promotion or other meetings held in conjunction with a licensee's general business;

17.6(3) A course certified by the use of a challenge examination. All students complete the necessary number of classroom hours to receive certification;

17.6(4) Meetings which are a normal part of in-house staff or employee training;

17.6(5) Orientation courses for licensees, such as those offered through local real estate boards.

193E—17.7(543B) Standards for approval of courses of instruction. The commission may approve live classroom instruction, distance education programs and paper and pencil home-study courses, subject to the following conditions:

17.7(1) The course pertains to real estate topics that are integrally related to the real estate industry; and

17.7(2) The course allows the participants to achieve a high level of competence in serving the objectives of consumers who engage the services of licensees; and

17.7(3) The course qualifies for at least one credit hour.

193E—17.8(543B) Responsibilities of instructors and course developers.

17.8(1) Instructors are competent in the subject matter and skilled in the use of appropriate teaching methods that have been proven effective through educational research and development.

17.8(2) Course content and materials are accurate and consistent with currently accepted standards relating to the program's subject matter.

17.8(3) Instructor and student materials are updated no later than 30 days after the effective date of a change in standards, laws or rules. Course content will not be considered current and up-to-date unless the new standards have been incorporated into the course or the instructor informs the participants of the new standards.

17.8(4) Instructors attend workshops or instructional programs, as reasonably requested by the commission, to ensure that effective teaching techniques are used and current, relevant and accurate information is taught.

17.8(5) All courses have an appropriate means of written evaluation by the participants. Evaluations include but are not limited to relevance of material, effectiveness of presentation and course content.

193E—17.9(543B) Standards for approval of classroom courses.

17.9(1) The commission may approve live classroom courses, subject to the following criteria.

17.9(2) The course application is accompanied by a comprehensive course outline that includes:

- a.* Description of course.
- b.* Purpose of course.
- c.* Level of difficulty.
- d.* Detailed learning objectives for each major topic that specify the level of knowledge or competency the student should demonstrate upon completing the course.
- e.* Description of the instructional methods utilized to accomplish the learning objectives.
- f.* Copies of all instructor and student course materials.
- g.* Course examination(s) or the diagnostic assessment method(s) utilized to achieve the course learning objectives, when applicable.
- h.* A description of the plan in place to periodically review course material with regard to changing federal and state statutes.
- i.* A statement of any attendance make-up policy that the school has in place.

193E—17.10(543B) Standards for approval of distance learning courses. The commission may approve distance learning courses, subject to the following criteria:

17.10(1) The provider's purpose or mission statement is available to the public.

17.10(2) The course outline includes clearly stated learning objectives and desired student competencies for each module of instruction and a description of how the program promotes interaction between the learner and the program.

17.10(3) The course content is accurate and up-to-date. The provider describes the plan in place to periodically review course material with regard to changing federal and state statutes.

17.10(4) The course is designed to ensure that student progress is evaluated at appropriate intervals and mastery of the material is achieved before a student can progress through the course material.

a. Students completing distance learning continuing education complete a final examination containing 10 questions for a one-hour course, 20 questions for a two-hour course, 30 questions for a three-hour course, 40 questions for a four-hour course, and 60 questions for a six- or eight-hour course.

b. A passing score of 80 percent is needed for course credit to be granted. There is no limit to the number of times a final examination may be taken to achieve a passing score.

17.10(5) The provider shows that qualified individuals are involved in the design of the course.

17.10(6) The provider lists individuals who provide technical support to students and state the specific times when support is available.

17.10(7) A manual is provided to each registered student. It includes, but is not limited to, faculty contact information, student assignments and course criteria, broadcast schedules, testing information, passing scores, resource information, fee schedule and refund policy.

17.10(8) The provider retains a statement signed by the student that affirms that the student completed the necessary work and examinations.

17.10(9) The provider states in the course materials that the information presented in the course should not be used as a substitute for competent legal advice.

17.10(10) Courses submitted for approval are sufficient in scope and content to justify the hours requested by the provider.

17.10(11) Courses that have obtained approval from the Association of Real Estate License Law Officials (ARELLO) are automatically approved in Iowa.

17.10(12) All computer-based continuing education and prelicense courses are completed within six months of the date of purchase.

193E—17.11(543B) Standards for approval of paper and pencil home-study courses. The commission may approve paper and pencil home-study courses, subject to the following criteria:

17.11(1) Courses are arranged in chapter format and include a table of contents.

17.11(2) Overview statements that preview the content of the chapter are included for each chapter.

17.11(3) Courses are designed to ensure that student progress is evaluated at appropriate intervals. The assessment process measures what each student has learned and not learned at regular intervals throughout each module of the course. The student completes and returns quizzes to the provider to receive credit for the course.

17.11(4) Students completing paper and pencil home-study continuing education complete a final examination containing 10 questions for a one-hour course, 20 questions for a two-hour course, 30 questions for a three-hour course, 40 questions for a four-hour course, and 60 questions for a six- or eight-hour course.

17.11(5) A passing score of 80 percent is needed for course credit to be granted. There is no limit to the number of times a final examination may be taken to achieve a passing score.

17.11(6) A licensee has six months from the date of purchase to complete all quizzes and assignments and to pass the final examination.

17.11(7) The provider includes information that clearly informs the licensee of the course completion deadline, passing score needed, chapter quiz completion criteria and any other relevant information regarding the course.

17.11(8) The provider states in the course materials that the information presented in the course should not be used as a substitute for competent legal advice.

17.11(9) The provider retains a statement signed by the student that affirms that the student completed the necessary work and examinations.

17.11(10) The provider is available to answer student questions or provide assistance as necessary during normal business hours.

17.11(11) Courses submitted for approval are sufficient in scope and content to justify the hours requested by the provider.

193E—17.12(543B) Qualifying as an instructor.

17.12(1) Individuals may be approved to teach prelicense and continuing education when they have shown proof of attendance of six hours at an instructor development workshop approved by the commission within 12 months preceding approval and have met the instructor qualification criteria.

17.12(2) Guest speakers and individuals currently certified by a nationally recognized organization, such as a DREI, that has similar instructor standards are exempt, with prior approval of the commission, from the instructor qualification criteria and the instructor development workshop criteria.

17.12(3) An applicant may be approved as an instructor when it is determined that the applicant evidences the ability to teach and communicate and possesses in-depth knowledge of the subject matter to be taught.

a. The applicant demonstrates the ability to teach by meeting at least one of the following criteria:

(1) Holds a bachelor's degree or higher in education from an accredited college (copy(ies) of transcript(s) to be attached); or

- (2) Holds a current teaching credential or certificate in any field (copy to be attached); or
- (3) Holds a certificate of completion from a real estate instructor institute, workshop or school approved by the real estate commission and has experience in the area of instruction (specific teaching experiences to be detailed); or
- (4) Holds a full-time current appointment to the faculty of an accredited college; or
- (5) Holds a current teaching designation from an organization approved by the real estate commission (evidence to be attached).

b. The applicant demonstrates in-depth knowledge of the subject matter by meeting at least one of the following criteria:

- (1) Holds a bachelor's degree or higher from an accredited college with a major in a field of study directly related to the subject matter of the course the applicant proposes to teach, such as business, economics, accounting, real estate or finance (copy of transcript to be attached); or
- (2) Holds a bachelor's degree or higher from an accredited college and five years of real estate experience directly related to the subject matter of the course the applicant proposes to teach (copy of transcript to be attached and documentation to explain how applicant's experience is directly related to the subject matter the applicant proposes to teach); or
- (3) Be a licensed attorney in practice for at least three years in an area directly related to the subject matter of the course the applicant proposes to teach; or
- (4) Be a highly qualified professional with a generally recognized professional designation such as, but not limited to, FLI, MAI, SIOR, SREA, CRB, CRS, CPM, but not including GRI, and two years of education from a postsecondary institution (evidence of both to be attached); or
- (5) Have extensive instructional background in real estate education and experience in real estate as evidenced by a valid broker's license or five years of active real estate experience as a salesperson (evidence to be provided). In addition, three recently written letters of recommendation that attest to the applicant's in-depth knowledge combined with the ability to teach and communicate the subject the applicant proposes to teach; or
- (6) Other, as the commission may determine.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 18
“Investigations and Disciplinary Procedures”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter provides guidelines for investigations and complaints. The rules also provide guidelines for discipline that the Real Estate Commission (Commission) may impose following a complaint and investigation. The Commission receives 300 to 400 complaints per year. This is a necessary chapter to protect the public.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The licensees may incur costs in the form of legal representation or time away from work to comply with investigations. Licensees may also be assessed civil penalties in the event the Commission determines discipline is necessary.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefits of these proposed rules are to ensure public well-being and maintain high standards when providing services for Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Commission receives 300 to 400 complaints per year, with approximately half of those complaints receiving discipline per year.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for harm to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of practice.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The agency incurs costs for the staff time needed to manage Commission activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage these rules is generally in the form of responding to questions related to complaints and the act of investigating the case. An executive officer supports the full scope of work of this Commission. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing these proposed rules are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for harm to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of practice.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Commission has not identified a less restrictive alternative to provide public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Commission believes that these requirements are important in order to ensure Iowans receive assistance from competent real estate agents.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Commission has not identified any less restrictive or alternative methods to implement this rule.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Commission believes the current requirements are important to ensure Iowans receive adequate and competent assistance with their real estate needs.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of the changes to this chapter. The proposed rules relate to high-stakes public safety concerns and ensure Iowans receive competent real estate services, especially when making a large investment, such as purchasing or selling property. While some real estate licensees may work for themselves or a small business, others work for large corporations and agencies. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 18 and adopt the following **new** chapter in lieu thereof:

CHAPTER 18
INVESTIGATIONS AND DISCIPLINARY PROCEDURES

193E—18.1(17A,272C,543B) Disciplinary and investigative authority. The commission is empowered to administer Iowa Code chapters 17A, 272C, and 543B and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals for the performance of real estate services within this state or for clients in this state. To perform these functions, the commission is broadly vested with authority, pursuant to Iowa Code sections 17A.13, 272C.3 to 272C.6, 272C.10, 543B.9, 543B.29, 543B.34 to 543B.41, and 543B.61, to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and prosecute disciplinary proceedings, establish standards of professional conduct, and impose discipline.

193E—18.2(17A,272C,543B) Grounds for discipline. The commission may initiate disciplinary action against a licensee on any of the following grounds:

1. All grounds set forth in Iowa Code sections 543B.29, 543B.34 and 543B.61.
2. A violation of the rules of professional and business conduct described in 193E—Chapters 6 to 8, 10 to 15, and 19.
3. Failure to comply with an order of the commission imposing discipline.
4. Violation of Iowa Code sections 272C.3(2) and 272C.10.
5. Continuing to practice real estate with an expired or inactive license, or without satisfying the continuing education mandated by 193E—Chapter 16 or the errors and omissions insurance mandated by 193E—Chapter 19.
6. Knowingly aiding or abetting a licensee, license applicant or unlicensed person in committing any act or omission which is a ground for discipline under this rule or otherwise knowingly aiding or abetting the unlicensed practice of real estate in Iowa.
7. Failure to fully cooperate with a licensee disciplinary investigation, including failure to respond to a commission inquiry within 14 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the commission office.
8. A violation of one or more of the acts or omissions upon which civil penalties may be imposed, as described in subrule 18.14(5).

193E—18.3(17A,272C,543B) Initiation of disciplinary investigations. The commission may initiate a licensee disciplinary investigation upon the commission's receipt of information suggesting that a licensee may have violated a law or rule enforced by the commission which, if true, would constitute a ground for licensee discipline.

193E—18.4(272C,543B) Sources of information. Without limitation, the following nonexclusive list of information sources may form the basis for the initiation of a disciplinary investigation or proceeding:

1. News articles or other media sources.
2. Reports filed with the commission by the commissioner of insurance pursuant to Iowa Code section 272C.4(9).
3. Complaints filed with the commission by any member of the public.
4. License applications or other documents submitted to the commission.
5. Reports to the commission from any regulatory or law enforcement agency from any jurisdiction.
6. Commission audits of licensee compliance, such as those involving continuing education, trust accounts, or errors and omissions insurance.

193E—18.5(17A,272C,543B) Conflict of interest. If the subject of a complaint is a member of the commission, or if a member of the commission has a conflict of interest in any disciplinary matter before the commission, that member abstains from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193E—18.6(272C,543B) Complaints. Written complaints may be submitted to the commission office by mail, email, online via the commission's website, or personal delivery by any member of the public with knowledge of possible law or rule violations by licensees. Timely filing is encouraged to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may become substantially altered during a period of delay.

18.6(1) Contents of a written complaint. Written complaints may be submitted on forms provided by the commission which are available from the commission office and on the commission's Website. Written complaints, whether submitted on a commission complaint form or in other written medium, contains the following information:

- a. The full name, address, and telephone number of the complainant (person complaining).
- b. The full name, address, and telephone number of the respondent (licensee against whom the complaint is filed).
- c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions which the complainant believes demonstrates that the respondent has violated or is violating laws or rules enforced by the commission.
- d. If known, citations to the laws or rules allegedly violated by the respondent.
- e. Evidentiary supporting documentation.
- f. Steps, if any, taken by the complainant to resolve the dispute with the respondent prior to filing a complaint.
- g. The address of the property involved.

18.6(2) Immunity. A person is not civilly liable for filing a complaint unless such act is done with malice as provided by Iowa Code section 272C.8(1) "a." Employees cannot be discriminated against as a result for filing a complaint as provided by Iowa Code section 272C.8(1) "c."

18.6(3) Role of complainant. The role of the complainant in the disciplinary process is limited to providing the commission with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding which may be initiated by the commission based in whole or in part on information provided by the complainant.

18.6(4) Role of the commission. The commission does not act as an arbiter of disputes between private parties, nor does the commission initiate disciplinary proceedings to advance the private interests of any person or party. The role of the commission in the disciplinary process is to protect the public by

investigating complaints and initiating disciplinary proceedings in appropriate cases. The commission possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

18.6(5) *Initial complaint screening.* All written complaints received by the commission are initially screened by the commission's administrator or designated staff to determine whether the allegations of the complaint fall within the commission's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a licensee. Complaints which are clearly outside the commission's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous may be closed by the commission administrator or may be referred by the commission administrator to the commission for closure at the next scheduled commission meeting. All other complaints are referred by the commission administrator to the commission's disciplinary committee for committee review as described in rule 193E—18.9(17A,272C,543B). If a complainant objects in writing to the closure of the complaint by the commission administrator, the administrator will refer the objection to the disciplinary committee or commission for reconsideration.

18.6(6) *Withdrawal or amendment.* A complaint may be amended or withdrawn at any time prior to official notification of the respondent and thereafter at the sole discretion of the commission. The commission may choose to pursue a matter even after a complaint has been withdrawn.

193E—18.7(272C,543B) Case numbers. Whether based on a written complaint received by the commission or a complaint initiated by the commission, all complaint files are tracked by a case numbering system. Complaints are assigned case numbers in chronological order with the first two digits representing the year in which the complaint was received or initiated, and the second three digits representing the order in which the case file was opened (e.g., 01-001, 01-002, 01-003). The commission's administrator maintains a case file log noting the date each case file was opened, whether disciplinary proceedings were initiated in the case, and the final disposition of the case. Once a case file number is assigned to a complaint, all persons communicating with the commission regarding that complaint are encouraged to include the case file number to facilitate accurate records and prompt response.

193E—18.8(272C,543B) Confidentiality of complaint and investigative information. All complaint and investigative information received or created by the commission is privileged and confidential pursuant to Iowa Code section 272C.6(4) and as such is not subject to discovery, subpoena, or other means of legal compulsion for release to any person except as provided in Iowa Code section 272C.6.

193E—18.9(17A,272C,543B) Investigation procedures.

18.9(1) *Disciplinary committee.* The commission chair may appoint two members of the commission to serve on a commission disciplinary committee. The chair may appoint a standing committee or may appoint different members to serve on the committee on an as-needed basis. The disciplinary committee is a purely advisory body which reviews complaint files referred by the commission's administrator, generally supervises the investigation of complaints, and makes recommendations to the full commission on the disposition of complaints. Except as provided by rule 193E—18.10(17A,272C,543B), members of the committee do not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the commission.

18.9(2) *Committee screening of complaints.* Upon the referral of a complaint from the commission's administrator or from the full commission, the committee determines whether the complaint presents facts which, if true, suggest that a licensee may have violated a law or rule enforced by the commission. If the committee concludes that the complaint does not present facts which suggest such a violation or that the complaint does not otherwise constitute an appropriate basis for disciplinary action, the committee refers the complaint to the full commission with the recommendation that it be closed with no further

action. If the committee determines that the complaint does present a credible basis for disciplinary action, the committee may either immediately refer the complaint to the full commission recommending that a disciplinary proceeding be commenced or initiate a disciplinary investigation.

18.9(3) Committee procedures. If the committee determines that additional information is necessary or desirable to evaluate the merits of a complaint, the committee may assign an investigator or expert consultant, appoint a peer review committee, provide the licensee an opportunity to appear before the disciplinary committee for an informal discussion as described in rule 193E—18.10(17A,272C,543B) or request commission staff to conduct further investigation. Upon completion of an investigation, the investigator, expert consultant, peer review committee or commission staff presents a report to the committee. The committee reviews the report and determines what further action is necessary. The committee may:

- a. Request further investigation.
- b. Determine there is not probable cause to believe a disciplinary violation has occurred and refer the case to the full commission with the recommendation of closure.
- c. Determine there is probable cause to believe that a law or rule enforced by the commission has been violated, but that disciplinary action is unwarranted on other grounds, and refer the case to the full commission with the recommendation of closure. The committee may also recommend that the licensee be informally cautioned or educated about matters which could form the basis for disciplinary action in the future.
- d. Determine there is probable cause to believe a disciplinary violation has occurred and either attempt informal settlement, subject to approval by the full commission, or refer the case to the full commission with the recommendation that the commission initiate a disciplinary proceeding (contested case).
- e. Stay further action on the complaint if, for instance, there is a pending criminal case or civil litigation and the committee feels it would be in the best interest of the public and respondent to await the final outcome of the litigation. Additionally, the committee may stay further action on a complaint when the respondent's license is expired or revoked.

18.9(4) Subpoena authority. The commission is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the commission deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision of whether to initiate a disciplinary proceeding, pursuant to Iowa Code sections 17A.13(1), 272C.6(3) and 543B.36. Commission procedures concerning investigative subpoenas are set forth in 193—Chapter 6.

193E—18.10(17A,272C,543B) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected licensee, the committee may grant the licensee an opportunity to appear before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

18.10(1) An informal discussion is intended to provide a licensee an opportunity to share the licensee's side of a complaint in an informal setting before the commission determines whether probable cause exists to initiate a disciplinary proceeding. Licensees are not obligated to attend an informal discussion. Because disciplinary investigations are confidential, the licensee cannot bring other persons to an informal discussion, but licensees may be represented by legal counsel. When an allegation is made against a firm, the firm may be represented by the designated broker, a managing partner, member or other firm representative.

18.10(2) Unless disqualification is waived by the licensee, commission members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because commission members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all commission members to participate

in commission decision making and to receive the advice of staff, licensees who desire to attend an informal discussion therefore waive their right to seek disqualification of a commission member or staff based solely on the commission member's or staff's participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that a participating commission member or staff person is not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

18.10(3) Because an informal discussion constitutes a part of the commission's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the commission in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

18.10(4) The disciplinary committee, subject to commission approval, may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges is filed simultaneously with the consent order, as provided in rule 193—7.4(17A,272C).

193E—18.11(17A,272C,543B) Closing complaint files.

18.11(1) *Grounds for closing.* Upon the recommendation of the administrator pursuant to subrule 18.6(5), the recommendation of the disciplinary committee pursuant to rule 193E—18.9(17A,272C,543B), or on its own motion, the commission may close a complaint file, with or without prior investigation. Given the broad scope of matters about which members of the public may complain, it is not possible to catalog all possible reasons why the commission may close a complaint file. The commission will take into consideration the severity of the alleged violation, the sufficiency of the evidence, the possibility that the problem can be better resolved by other means available to the parties, whether the matter has been the subject of a local board proceeding, the clarity of the laws and rules which support the alleged violation, whether the alleged violation is likely to recur, the past record of the licensee, whether the licensee has previously received a cautionary letter concerning the act or omission at issue, and other factors relevant to the specific facts of the complaint. The following nonexclusive list illustrates the grounds upon which the commission may close a complaint file:

- a. The complaint alleges matters outside the commission's jurisdiction.
- b. The complaint does not allege a reasonable or credible basis to believe that the subject of the complaint violated a law or rule enforced by the commission.
- c. The complaint is frivolous or trivial.
- d. The complaint alleges matters more appropriately resolved in a different forum, such as civil litigation to resolve a contract dispute, or more appropriately addressed by alternative procedures, such as outreach education or rulemaking.
- e. The matters raised in the complaint are situational, isolated, or unrepresentative of a licensee's typical practice, and the licensee has taken appropriate steps to ensure future compliance and prevent public injury.
- f. Resources are unavailable or better directed to other complaints or commission initiatives in light of the commission's overall budget and mission.
- g. Extenuating factors exist which weigh against the imposition of public discipline.

18.11(2) *Closing orders.* The commission's administrator may enter an order stating the basis for the commission's decision to close a complaint file. If entered, the order cannot contain the identity of the complainant or the respondent, and cannot disclose confidential complaint or investigative information. If entered, closing orders will be indexed by case number and are a public record pursuant to Iowa Code section 17A.3(1) "d." A copy of the order may be mailed to the complainant, if any, and to the respondent. The commission's decision whether or not to pursue an investigation, to institute disciplinary proceedings, or to close a file is not subject to judicial review.

18.11(3) *Cautionary letters.* When a complaint file is closed, the commission may issue a confidential letter of caution to a licensee which informally cautions or educates the licensee about matters which could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the commission

may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

18.11(4) *Reopening closed complaint files.* The commission may reopen a closed complaint file if, after closure, additional information arises which provides a basis to reassess the merits of the initial complaint.

193E—18.12(17A,272C,543B) Initiation of disciplinary proceedings. Disciplinary proceedings may only be initiated by the affirmative vote of a majority of a quorum of the commission at a public meeting. Commission members who are disqualified are not included in determining whether a quorum exists. When two or more members of the commission are disqualified or otherwise unavailable for any reason, the administrator may request the special appointment of one or more substitute commission members pursuant to Iowa Code section 17A.11(5).

193E—18.13(17A,272C,543B) Disciplinary contested case procedures. Unless in conflict with a provision of Iowa Code chapter 543B or commission rules in this chapter, all of the procedures set forth in 193—Chapter 7 applies to disciplinary contested cases initiated by the commission.

193E—18.14(272C,543B) Disciplinary sanctions.

18.14(1) *Type of sanctions.* The commission has authority to impose, alone or in combination, the following disciplinary sanctions:

- a.* Revocation of a license.
- b.* Suspension of a license for a period of time or indefinitely.
- c.* Nonrenewal of a license.
- d.* Ban permanently, until further order of the commission, or for a specified period of time, the engagement in specified procedures, methods or acts.
- e.* Probation. As a condition to a period of probation, the commission may impose terms and conditions deemed appropriate by the commission including, but not limited to, substance abuse evaluation and such care and treatment as recommended in the evaluation or otherwise appropriate under the circumstances.
- f.* Mandate additional continuing education. The commission may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The commission may also specify whether this continuing education be in addition to the continuing education routinely needed for license renewal. The commission may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a license.
- g.* Require reexamination.
- h.* Impose a monitoring or supervision arrangement.
- i.* Downgrade a license from a broker license to a salesperson license.
- j.* Issue a reprimand.
- k.* Order a physical or mental examination with periodic reports to the commission, if deemed necessary.
- l.* Impose civil penalties, the amount of which is at the discretion of the commission, but does not exceed \$2,500 per violation as authorized by Iowa Code section 543B.48. Civil penalties may be imposed for any of the disciplinary violations specified in rule 193E—18.2(17A,272C,543B) and as listed in subrule 18.14(5).

18.14(2) *Imposing discipline.* Discipline may only be imposed against a licensee by the authorization of Iowa Code section 272C.6(5). When determining the nature and severity of the sanction to be imposed against a particular licensee or groups of licensees, the commission may consider the following factors:

- a.* The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.
- b.* The facts of the particular violation.

- c. Number of prior violations.
- d. Seriousness of prior violations.
- e. Whether remedial action has been taken.
- f. The impact of the particular activity upon the public.
- g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee, including those listed in subrule 18.14(6).

18.14(3) *Voluntary surrender.* The commission may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The commission cannot accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such a voluntary surrender is considered disciplinary action and is published in the same manner as is applicable to any other form of disciplinary order.

18.14(4) *Notification criteria.* Whenever a broker's license is revoked, suspended, limited, or voluntarily surrendered under this chapter, the licensee follows the procedures set forth in rule 193E—7.3(543B). Strict compliance with these procedures is a condition for an application for reinstatement. Whenever a salesperson's or broker associate's license is revoked, suspended, limited, or voluntarily surrendered under this chapter, the licensee immediately notifies the licensee's broker, and:

a. Within seven days of receipt of the commission's final order, notifies in writing all clients of the fact that the license has been revoked, suspended, limited, or voluntarily surrendered. Such notice advises the client to immediately contact the broker, unless the limitation at issue would not impact the real estate services provided for that client.

b. Within 30 days of receipt of the commission's final order, the licensee files with the commission copies of the notices sent pursuant to paragraph 18.14(4) "a." Compliance with this criteria is a condition for an application for reinstatement.

18.14(5) *Violations for which civil penalties may be imposed.* The following is a nonexclusive list of violations upon which civil penalties may be imposed:

- a. Engaging in activities requiring a license when license is inactive.
- b. Failing to maintain a place of business.
- c. Improper care and custody of license:
 - (1) Failing to properly display license(s).
 - (2) Failing to return license in a timely manner (received within 72 hours as provided by 193E—subrules 6.1(1) and 6.1(2)).
 - (3) Failing to notify associate when license is returned.
 - (4) Failing to provide mailing address of associate when license is returned.
- d. Failing to inform commission and remit necessary fees if appropriate:
 - (1) When changing business address (five working days).
 - (2) When changing status (five working days).
 - (3) When changing form of firm (five working days).
 - (4) When opening a trust account by not filing a consent to examine for the account.
 - (5) When changing residence address or mailing address (five working days).
 - (6) When independently obtained errors and omissions insurance status, coverage or provider changes (five working days).
- e. Maintaining inadequate transaction records such as:
 - (1) Failing to maintain a general ledger.
 - (2) Failing to maintain individual account ledgers.
 - (3) Failing to retain records on file.
- f. Improper trust account and closing procedures:
 - (1) Failing to deposit funds as necessary.
 - (2) Disbursing trust funds prior to closing without written authorization.
 - (3) Withholding earnest money unlawfully when the transaction fails to consummate.
 - (4) Failing to obtain escrow agreement for undisbursed funds.
 - (5) Failing to remit and account for interest on closing statements.

- (6) Computing closing statements improperly.
- (7) Failing to provide closing statements.
- (8) Retaining excess personal funds in the trust account.
- (9) Failing as a salesperson or broker associate to immediately turn funds over to the broker.
- (10) Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code section 543B.46.
- (11) Failing to account for and remit to the state accrued interest due in accordance with Iowa Code section 543B.46.
 - g.* Failing to immediately present offer.
 - h.* Advertising without identifying broker or clearly indicating advertisement is by a licensee.
 - i.* Failing to provide information to the commission when requested relative to a complaint (14 calendar days).
 - j.* Failing to obtain all signatures needed on contracts or to obtain signatures or initials of all parties to changes in a contract.
 - k.* Placing a sign on property without consent, or failure to remove a sign when requested.
 - l.* Failing to furnish a progress report when requested.
 - m.* Failing by a broker to supervise salespersons or broker associates.
 - n.* Failing by a broker associate or salesperson to keep the employing broker informed.
 - o.* Issuing an insufficient funds check to the commission for any reason or to anyone else in the individual's capacity as a real estate licensee.
 - p.* Issuing an insufficient funds check on the broker's trust account.
 - q.* Engaging in conduct which constitutes a barred practice or tying arrangement as banned by these rules.
 - r.* Failing to inform clients of real estate brokerage firm of the date the firm will cease to be in business and the effect upon sellers' listing agreements.
 - s.* Violating any of the remaining provisions in 193E—Chapters 1 to 20 inclusive, which have not heretofore been specified in this rule.

18.14(6) Amount of civil penalties. Factors the commission may consider when determining whether to assess and the amount of civil penalties include:

- a.* Whether other forms of discipline are being imposed for the same violation.
- b.* Whether the amount imposed will be a substantial deterrent to the violation.
- c.* The circumstances leading to the violation.
- d.* The severity of the violation and the risk of harm to the public.
- e.* The economic benefits gained by the licensee as a result of the violation.
- f.* The interest of the public.
- g.* Evidence of reform or remedial action.
- h.* Time elapsed since the violation occurred.
- i.* Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.
- j.* The clarity of the issues involved.
- k.* Whether the violation was willful and intentional.
- l.* Whether the licensee acted in bad faith.
- m.* The extent to which the licensee cooperated with the commission.
- n.* Whether the licensee with a lapsed, inactive, suspended, limited or revoked license improperly engaged in practices which need licensure.

193E—18.15(17A,272C,543B) Reinstatement. The term “reinstatement” as used in this rule includes both the reinstatement of a suspended license and the issuance of a new license following the revocation, voluntary revocation, or voluntary surrender of a license.

18.15(1) Any person whose license has been revoked or suspended by the commission, or who has voluntarily surrendered a license to the commission or has agreed to a voluntary revocation of a license,

may apply to the commission for reinstatement in accordance with the terms of the order of revocation, voluntary surrender, voluntary revocation, or suspension.

18.15(2) Unless otherwise provided by law, if the order of revocation, voluntary revocation, voluntary surrender, or suspension did not establish terms upon which reinstatement might occur, initial application for reinstatement cannot be made until at least two years have elapsed from the date of the order or the date the commission accepted the order.

18.15(3) Following the revocation or surrender of a broker or salesperson license, an applicant for reinstatement, as a condition of reinstatement, start over as an original applicant for a salesperson license, regardless of the type of license the applicant previously held. The applicant is obligated to satisfy all preconditions for licensure as a salesperson.

18.15(4) In addition to the provisions of rule 193—7.38(17A,272C), the following provisions apply to license reinstatement proceedings:

a. The commission may grant an applicant's request to appear informally before the commission prior to the issuance of a notice of hearing on an application to reinstate if the applicant requests an informal appearance in the application and agrees not to seek to disqualify, on the ground of personal investigation, commission members or staff before whom the applicant appears.

b. An order granting an application for reinstatement may impose such terms and conditions as the commission deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193E—18.14(543B).

c. The commission cannot grant an application for reinstatement when the initial order which revoked, suspended or limited the license; denied license renewal; or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the commission's satisfaction that:

- (1) All terms of the sentencing or other criminal order have been fully satisfied;
- (2) The applicant has been released from confinement and any applicable probation or parole; and
- (3) Restitution has been made or is reasonably in the process of being made to any victims of the crime.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 19
“Requirements for Mandatory Errors and Omissions Insurance”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 543B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

These proposed rules provide definitions and requirements for licensees to carry errors and omissions (E&O) insurance. The rules specify the minimum amount of insurance that is required and the minimum deductible required for each policy. The rules also set the guidelines for compliance with E&O insurance requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensees are responsible for covering the cost of the premium for their E&O insurance policy.

- Classes of persons that will benefit from the proposed rulemaking:

The public benefits from these proposed rules because the rules ensure the public has a method of recourse should a real estate agent make a mistake that causes damages to an individual.

The licensee also benefits from these rules by having an insurance policy to back up the licensee should a claim be filed against the licensee for an act committed or omitted during a real estate transaction.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

While there is no direct cost to the public for these proposed rules, licensees do bear the costs of carrying the E&O insurance policy. Insurance policies are provided by private insurance companies, and costs vary depending on the licensee’s history, experience and claims history. The Real Estate Commission (Commission) is not privy to the exact cost of E&O coverage.

- Qualitative description of impact:

The exact cost of E&O coverage is unknown by the Commission. The Commission does recognize that this is a significant cost to the licensee. However, the cost to the public could be significantly higher if insurance rules were not in place for real estate licensees.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with carrying E&O insurance are paid to insurance companies that provide the coverage, not the State. There is no anticipated impact from these proposed rules on state revenues.

Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Reducing or eliminating the need for E&O coverage would lower the cost to the licensee to meet this requirement. The Commission believes with rising property costs and inflation, the current guidelines for minimum coverage on an E&O insurance policy are effective to protect the public.

The Commission believes there could be a negative impact to the public if the E&O requirement was reduced or eliminated. This could lead to more complaints, investigations, and, ultimately, public discipline.

There would be a loss of revenue for the private insurance industry that offers these insurance policies.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Less restrictive alternatives would be reducing or eliminating the requirement for E&O insurance coverage. The Commission believes there could be a negative impact on the public if the E&O requirement was reduced or eliminated. With rising property costs and inflation, the Commission believes the minimum requirements set in these proposed rules adequately protect the public.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Commission has not identified a more cost-effective or less restrictive alternative to the E&O requirement, other than reducing coverage. E&O insurance minimum coverages could be reduced or eliminated for the purpose of lowering the cost of the insurance premium for licensees, but the Commission would be concerned that the insurance coverage would not adequately protect the public should a claim arise.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Commission has not identified a more cost-effective alternative to the proposed E&O coverage requirement. The Commission believes the minimum requirements set out in these proposed rules ensure Iowans receive high-quality services and are protected in the case of an error or omission on the part of the real estate licensee during the transaction.

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of the changes to this chapter. The proposed rules relate to high-stakes public safety concerns and ensure that Iowans receive competent real estate services and that, if services are not competent, the public is protected from financial loss. While some real estate licensees may work for themselves or a small business, others work for large corporations and agencies. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business. Additionally, the proposed insurance requirements are in place to protect the small business should a claim arise against the small business or one of its agents. Should an individual licensee find a requirement to be overly burdensome, the licensee could utilize the established waiver process to request a waiver from the requirement.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19
REQUIREMENTS FOR MANDATORY ERRORS AND OMISSIONS INSURANCE

193E—19.1(543B) Insurance definitions.

“*Aggregate limit*” is a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period such as the policy term.

“*Claims-made*” means policies written under a claims-made basis will cover claims made (reported or filed) during the year the policy is in force for incidents which occur that year or during any previous period the policyholder was insured under the claims-made contract. This form of coverage is in contrast to the occurrence policy which covers today’s incident regardless of when a claim is filed even if it is one or more years later.

“*Extended reporting period*” is a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim had been made during the policy period.

“*Licensee*” is any active individual broker, broker associate, or salesperson; any partnership; or any corporation.

“*Per claim limit*” means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

“*Prior acts coverage*” applies to policies on a claims-made versus occurrence basis. Prior acts coverage responds to claims which are made during a current policy period, but the act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.

“*Proof of coverage*” means a copy of the actual policy of insurance, a certificate of insurance or a binder of insurance.

“*Retroactive date*” is a provision found in many claims-made policies. The policy will not cover claims for injuries or damages that occurred prior to the retroactive date even if the claim is first made during the policy period.

“*Umbrella type coverage*” means a policy that provides insurance coverage for the broker or firm and all licensees assigned.

193E—19.2(543B) Insurance criteria—general. The group coverage insurance policy selected by the commission is approved by the Iowa insurance division. As a condition of licensure, all active real estate licensees follow Iowa Code section 543B.47(1) regarding mandatory errors and omissions insurance.

19.2(1) Who submits plan of coverage. The following persons submit proof of insurance when needed or when requested:

- a. Any active individual broker, broker associate, broker sole proprietor or salesperson.
- b. Any active firm.

19.2(2) Inactive status. Individuals whose licenses are on inactive status as defined in Iowa Code section 543B.5(12) do not need to carry errors and omissions insurance as authorized by Iowa Code section 543B.47(1).

19.2(3) Territory. All resident Iowa licensees are covered for activities contemplated under Iowa Code chapter 543B both in and out of the state of Iowa. Nonresident licensees participating under the state plan are not covered both in and out of the state of Iowa unless the state plan selected by the commission will cover participating nonresidents when involved in real estate activities in the nonresident state.

19.2(4) Insurance form. Licensees may obtain errors and omissions coverage through the insurance carrier selected by the commission to provide the group policy coverage. The following are minimum criteria of the group policy to be issued to the Iowa real estate commission including, as named insureds, all licensees who have paid the necessary premium:

- a. All activities contemplated under Iowa Code chapter 543B are included as covered activities;
- b. A per claim limit is not less than \$100,000;
- c. An annual aggregate limit is not less than \$100,000;
- d. Limits are to apply per licensee, per claim;
- e. Defense costs are to be payable in addition to damages;
- f. The contract of insurance pays, on behalf of the insured person(s), liabilities owed.

19.2(5) Contract period. The contract between the insurance carrier or program manager and the commission may be written for a one- to three-year period with the option to renew or renegotiate each year thereafter. The commission reserves the right to terminate the contract after written notice to the carrier at least 120 days prior to the end of any policy term and place the contract out for bid.

- a. Policy periods are not less than 12-month policy terms.
- b. The policy provides full and complete prior acts coverage.

(1) If the licensee purchased full prior acts coverage on or after July 1, 1991, that licensee continues to be guaranteed full prior acts coverage if insurance carriers are changed in the future.

(2) The retroactive date of the master policy is never later than July 1, 1991, for those that can provide proof of continuous coverage to that date.

(3) The retroactive date for each licensee is individually determined by the inception date of coverage and proof of continuous coverage to that date.

(4) The retroactive date for any new licensee who first obtains a license after July 1, 1991, is individually determined by the effective date of the license, the inception date of coverage, and proof of continuous coverage to that date.

19.2(6) Any licensee insured in the state selected program whose license becomes inactive will not be charged an additional premium if the license is reinstated during the policy period.

19.2(7) Any licenses issued at other than renewal and insured by the state selected program are subject to a pro-rata premium.

193E—19.3(543B) Other coverage. Licensees are not mandated to purchase insurance coverage through the group policy selected by the commission and may obtain errors and omissions coverage independently if the coverage contained in the policy complies with the following:

19.3(1) For active individual licensees, all provisions of Iowa Code section 543B.47 apply.

If the other coverage is an individual policy, it is each licensee's responsibility to provide proof of independently carried insurance coverage to the Iowa real estate commission when needed.

19.3(2) For all active partnerships and corporations, otherwise known as firms, all provisions of Iowa Code section 543B.47 apply.

a. If the other coverage is an individual policy covering the firm, it is the designated broker's responsibility to provide proof of the firm's independently carried insurance coverage to the Iowa real estate commission when needed.

b. If the other coverage is an umbrella type policy covering the firm and all licensees assigned that perform real estate activities, it is the responsibility of the designated broker of the firm to provide a list of licensees assigned to the firm that are covered under the firm's insurance policy to the Iowa real estate commission when needed.

19.3(3) For sole-proprietor single license brokers, all provisions of Iowa Code section 543B.47 apply.

a. If the broker's other coverage is an individual policy, it is each licensee's responsibility to provide proof of the independently carried insurance coverage to the Iowa real estate commission when needed, as provided in subrule 19.3(1).

b. If the other coverage is an umbrella type policy covering the broker and all licensees assigned that perform real estate activities, it is the responsibility of the broker to provide a list of licensees assigned to the broker that are covered under the broker's insurance policy to the Iowa real estate commission when needed.

19.3(4) For independently carried individual type coverage, the following apply:

a. All activities contemplated under Iowa Code chapter 543B are included as covered activities.

b. A per claim limit is not less than \$100,000.

c. The maximum deductible for an individual policy for damages and defense, each licensee, and each claim is not more than the deductible of the commission group policy for the current policy term.

19.3(5) For firms and sole-proprietor brokerages with independently carried firm umbrella type coverage, the following apply:

a. All activities contemplated under Iowa Code chapter 543B are included as covered activities.

b. A per claim limit is not less than \$100,000.

c. An aggregate limit is:

(1) Not less than \$250,000 for a broker or firm with two through ten licensees;

(2) Not less than \$500,000 for a broker or firm with 11 through 40 licensees;

(3) Not less than \$1,000,000 for a broker or firm with 41 or more licensees.

d. There is no maximum deductible limit for firm umbrella type coverage policy.

e. If a firm size change or a sole-proprietor brokerage size change results in a higher aggregate minimum criteria, that firm or broker corrects the deficiency within one year, or the next renewal term of the insurance policy, whichever comes first.

19.3(6) To comply with the provisions of the Iowa errors and omissions law, if other independently carried insurance is provided, as proof of errors and omissions coverage for individual or firm umbrella type coverage, the other insurance carrier agrees to either a noncancelable policy, or provides a letter of commitment to notify the Iowa real estate commission 30 days prior to the intention to cancel the policy.

19.3(7) Whenever commission criteria, coverage, or limits change, the commission provides a reasonable transition period to allow the licensee or firm with other coverage the opportunity to change carriers or coverage to comply with all criteria and limits, providing the present policy was in effect and in compliance with all prior criteria. The licensee or firm corrects the deficiency within one year, or not later than the next renewal term of the insurance policy, whichever comes first.

19.3(8) It is the responsibility of each individual licensee to notify the commission when changing insurance status, coverage, or provider when necessary or when requested.

19.3(9) It is the responsibility of the designated broker of the firm to notify the commission when changing insurance status, coverage, or provider when necessary or when requested.

19.3(10) Self-insurance does not comply with the provisions of the Iowa errors and omissions insurance law.

193E—19.4(543B) Administrative criteria—general.

19.4(1) It is the responsibility of the insurance carrier or program manager to obtain approval from the Iowa division of insurance for the group policy before inception of the program or policy period.

19.4(2) It is the responsibility of the insurance carrier or program manager to handle administrative duties relative to operation of the program selected by the commission, including billing and premium collection, toll-free access for questions, and claim processing and general informational mailings.

19.4(3) It is the responsibility of the insurance carrier or program manager to send a billing notice to each licensee.

19.4(4) It is the responsibility of the insurance carrier or program manager to collect all premiums due and verify proper payment.

A schedule of licensees who have paid the proper premium and who have coverage in force is provided electronically to the commission at agreed time intervals.

19.4(5) It is the responsibility of the insurance carrier or program manager to issue individual certificates to each licensee and a master policy to the commission.

19.4(6) It is the responsibility of the insurance carrier or program manager to market its program and to develop and distribute informational brochures about the coverages provided, services available and criteria of Iowa Code section 543B.47.

a. The content of any brochures or other literature provided is the responsibility of the insurance carrier or program manager.

b. Advertising materials may be reviewed by the executive officer for the commission or appropriate staff person for content only and not for a legal determination of compliance with Iowa law or division of insurance criteria.

19.4(7) It is the responsibility of the insurance carrier or program manager to provide educational seminars in the state of Iowa at the request of the commission and subject to terms and conditions agreeable to each party involved.

193E—19.5(543B) Commission responsibilities. The commission provides the insurance carrier or program manager an electronic schedule of all active licensees approximately three months in advance of inception (or renewal), or as otherwise agreed upon, which the insurance carrier or program manager may use to issue billing notices.

19.5(1) The insurance carrier or program manager provides the commission with a schedule of insured licensees. The commission will be responsible for comparing this schedule against its own records to determine which licensees elected not to participate in the state program and those that have failed to furnish the commission with acceptable proof of insurance necessary for continued licensure.

19.5(2) It is the responsibility of the commission to review proof of other insurance received from licensees not participating in the state program and to confirm that the other insurance meets the minimum criteria of these rules.

19.5(3) The commission may mandate that an approved standard form be used to submit proof of other insurance coverage for review.

193E—19.6(543B) Compliance.

19.6(1) The commission needs receipt of proof of errors and omissions insurance from new licensees before the license is issued.

19.6(2) The commission needs receipt of proof of errors and omissions insurance from the applicant before reinstating an expired license.

19.6(3) The commission needs receipt of proof of errors and omissions insurance before reactivating an inactive status license to active status.

19.6(4) Applicants for license renewal attest and certify that they have current errors and omissions insurance in effect that meets Iowa insurance criteria.

a. The commission will verify by random audit or on a test basis the insurance compliance attested to by the licensee.

b. Licensees participating in the state group program cannot be audited if commission records indicate the insurance carrier or program manager has submitted current proof of coverage.

c. Licensees with other insurance coverage cannot be audited if commission records indicate the current proof of coverage has been submitted.

d. The commission may random audit by any factor as will provide a reasonable sampling given the volume, purpose and scope of audit.

e. The commission may random audit as the result of any complaint filed with the commission whether or not adequate insurance coverage was questioned in the complaint.

f. The commission may audit compliance with insurance coverage at any time the commission has reasonable cause to question a licensee's compliance.

19.6(5) A licensee is needed to carry insurance on an uninterrupted basis and cannot avoid discipline simply by acquiring insurance after receipt of an audit notice.

19.6(6) Failure to comply with Iowa Code section 543B.47(6) within 20 calendar days of the commission's request is prima facie evidence of a violation of Iowa Code sections 543B.15(5) and 543B.47(1) and is grounds for the denial of an application for licensure, the denial of an application to renew a license, or the suspension or revocation of a license.

19.6(7) Submitting false documentation of insurance coverage, or falsely claiming to have or attesting to having insurance coverage, is prima facie evidence of violation of Iowa Code sections 543B.29(1) and 543B.34(1).

19.6(8) Failure to provide required proof of insurability within 30 days of written notice by the commission results in the placement of the license on inactive status. A license that has been placed on inactive status pursuant to this provision is not reactivated until satisfactory evidence has been provided verifying that coverage is current and in full force and effect.

193E—19.7(543B) Records and retention. It is the responsibility of the licensee to maintain records which support the validity of the insurance. Documentation is retained by the licensee for a period of three years after the license renewal date or the anniversary of the license renewal date.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 20
“Time-Share Filing”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter sets forth time-share filing requirements to time-share companies. This is strictly a marketing chapter for time-share companies to follow. Iowa Code chapter 557A covers laws that the companies will have to abide by. The intended benefit of this chapter is meant to be informational to the public regarding marketing in Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

This proposed chapter provides administrative background on time-share filing requirements. The Real Estate Commission (Commission) only has jurisdiction over the filing of time shares. The Commission does not have jurisdiction over the time-share companies. This proposed chapter is simply a requirement for companies to advertise their available time share in Iowa.

Only time-share companies bear the costs of this chapter.

- Classes of persons that will benefit from the proposed rulemaking:

The general public benefits from the knowledge of this proposed chapter. However, all time-share laws are covered under Iowa Code chapter 557A.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The cost of the time-share filing is not changing. The proposed rule imposes a basic filing fee of \$100, plus an additional fee of \$25 for every 100 time-share intervals or fraction thereof included in the offering. Registration fees are not changing, either. Those fees remain \$50 for a registration fee with

a prior registration, plus an additional fee of \$25 for every 100 time-share intervals or fraction thereof included in the offering. If there happens to be more time share filings, the state would incur a higher fiscal impact.

- Qualitative description of impact:

The proposed chapter makes time shares more accessible and provides a larger pool for Iowans to choose from when seeking services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed chapter on state revenues, unless more filings happen to take place.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None in this chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no rejections of alternative methods by the Commission for this proposed chapter. There is little information in this chapter. There were no alternative methods suggested.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Little to no impact on small business is anticipated as a result of the proposed chapter.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20
TIME-SHARE FILING

193E—20.1(557A) Time-share interval filing fees. Each initial filing made pursuant to Iowa Code sections 557A.11 and 557A.12 are accompanied by a basic filing fee of \$100 plus \$25 for every 100 time-share intervals or fraction thereof included in the offering.

20.1(1) A registration fee is paid with the filing of an application for registration consolidating additional time-share intervals with a prior registration and a fee of \$50 plus an additional fee of \$25 for every 100 time-share intervals or fraction thereof included in the offering.

20.1(2) A fee is not charged for amendments to the property report as a result of amendments to the initial filing, unless the commission determines the amendments are made for the purpose of avoiding the payment of a fee, in which event the amendment may be treated as an application for registration consolidating additional time-share intervals with a prior registration.

This rule is intended to implement Iowa Code chapter 557A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193E—Chapter 21
“Enforcement Proceedings Against Unlicensed Persons”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B
State or federal law(s) implemented by the rulemaking: No answer provided

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
8:40 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Renee Paulsen
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9028
Email: renee.paulsen@dia.iowa.gov

Purpose and Summary

This proposed chapter provides Iowans protection from unlicensed real estate practice. The chapter allows the Real Estate Commission (Commission) enforcement against unlicensed practice. The Commission sees a number of complaints against unlicensed individuals and companies every year. The rules provide guidelines for discipline the Commission may impose following a complaint and investigation.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to implement this proposed chapter. This chapter is related to unlicensed practices, and individuals who are found practicing without a license who could bear the cost of licensure and civil penalties imposed.

- Classes of persons that will benefit from the proposed rulemaking:

Licenseses, future licenseses, and the general public. The intended benefit of these proposed rules is to ensure public safety and maintain a high level of care for Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is a potential cost to unlicensed individuals where a cease and desist is issued with a disciplinary action of a civil penalty.

- Qualitative description of impact:

This proposed chapter provides an understanding of what actions the Commission may take against someone practicing real estate licensee duties without proper licensure. Establishing minimum requirements and imposing discipline on unlicensed practice when requirements are not met ensures safety for the public. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against an unlicensed person who violates any rules of the Commission.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency include the staff time needed to manage Commission activities, which include managing all chapters of the Commission's rules. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing board.

- Anticipated effect on state revenues:

Costs associated with implementing these proposed rules are paid by individuals or establishments, not the State. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

No new fees are being imposed. The benefits are less restrictive language and consolidation of chapters, which simplify rules and provide better understanding to the public, licensees and future licensees.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

As mentioned above, there is little or no cost implication. The Commission is taking the less intrusive route by removing the restrictive language in the proposed chapter. The Commission has not identified a less restrictive alternative to protect the public against unlicensed practice.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None in this chapter. The Commission was not interested in making changes to this proposed chapter. The Commission has strong feelings against unlicensed practice.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There were no alternative methods proposed in this proposed chapter by the Commission. This chapter is strictly for the protection of the public.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rules are meant to ensure public safety in terms of practice standards for real estate. To exempt small businesses from adhering to these rules would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193E—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
ENFORCEMENT PROCEEDINGS AGAINST UNLICENSED PERSONS

193E—21.1(17A,543B) Civil penalties against unlicensed persons.

21.1(1) Commission authority. The commission is authorized to issue a cease and desist order and to impose a civil penalty as authorized by Iowa Code section 543B.34(3) against any person who is not licensed by the commission but who acts in the capacity of a real estate broker or salesperson.

21.1(2) Unlicensed person. An “unlicensed person” includes any individual or business entity that has never been licensed by the commission, has voluntarily surrendered a license issued by the commission, or has allowed a license issued by the commission to lapse and the time in which the license could have been reinstated pursuant to rule 193E—3.6(272C,543B) or 193E—4.6(272C,543B) has passed.

193E—21.2(17A,543B) Unlawful practices. Practices by unlicensed persons which are subject to civil penalties include, but are not limited to:

1. Acts or practices by unlicensed persons which need licensure pursuant to Iowa Code sections 543B.1, 543B.3, and 543B.6, which do not fall into the exceptions listed in Iowa Code section 543B.7.
2. Violating Iowa Code section 543B.1.
3. Violating one or more of the provisions of Iowa Code section 543B.34 as they relate to acts or practices by unlicensed persons.
4. Use or attempted use of a licensee’s license or an expired, suspended, revoked, or nonexistent license.
5. Falsely impersonating a licensed real estate professional.
6. Providing false or forged evidence of any kind to the commission in obtaining or attempting to obtain a license.
7. Knowingly aiding or abetting an unlicensed person in any activity identified in this rule.

193E—21.3(17A,543B) Investigations. The commission is authorized by Iowa Code sections 17A.13(1) and 543B.34(3) to conduct such investigations as are needed to determine whether grounds exist to issue a cease and desist order and to impose civil penalties against an unlicensed person. Such investigations conform to the procedures outlined in 193—Chapter 6 and 193E—Chapter 18. Complaint and investigatory files concerning unlicensed persons are not confidential except as may be provided in Iowa Code chapter 22.

193E—21.4(17A,543B) Subpoenas. Pursuant to Iowa Code sections 17A.13(1) and 543B.34, the commission is authorized in connection with an investigation of an unlicensed person to issue subpoenas to compel persons to produce books, papers, records and any other real evidence, whether or not

privileged or confidential under law, which the commission deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Commission procedures concerning investigatory subpoenas are set forth in 193—Chapter 6.

193E—21.5(17A,543B) Notice of intent to impose civil penalty. Prior to issuing a cease and desist order and imposing a civil penalty against an unlicensed person, the commission provides the unlicensed person written notice and the opportunity to request a contested case hearing. Notice of the commission’s intent to issue a cease and desist order and to impose a civil penalty are served by certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ.P. 1.305. Alternatively, the unlicensed person may accept service personally or through authorized counsel. The notice includes the following:

1. A statement of the legal authority and jurisdiction under which the proposed cease and desist order would be issued and the civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty and the nature of the intended order to obligate compliance with Iowa Code chapter 543B.
5. Notice of the unlicensed person’s right to a hearing and the time frame in which hearing is requested.
6. The address to which written request for hearing is made.

193E—21.6(17A,543B) Requests for hearings.

21.6(1) Unlicensed persons request a hearing within 30 days of the date the notice is received if served through certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa R. Civ.P. 1.305. A request for hearing is in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

21.6(2) If a request for hearing is not timely made, the commission chair or the chair’s designee may issue an order imposing a civil penalty and compliance with Iowa Code chapter 543B, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

21.6(3) If a request for hearing is timely made, the commission issues a notice of hearing and conducts a contested case hearing in the same manner as applicable to disciplinary cases against licensees. Rules governing such hearings may be found in 193—Chapter 7 and 193E—Chapter 18.

21.6(4) An unlicensed person who fails to timely request a contested case hearing has failed to exhaust “adequate administrative remedies” as that term is used in Iowa Code section 17A.19(1).

21.6(5) An unlicensed person who is aggrieved or adversely affected by the commission’s final decision following a contested case hearing may seek judicial review as provided in Iowa Code section 17A.19.

21.6(6) An unlicensed person may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and compliance with Iowa Code chapter 543B at any stage of the proceeding upon mutual consent of the commission.

21.6(7) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in 193—subrule 7.30(2). Hearings are open to the public.

193E—21.7(17A,543B) Alternative procedure. The commission may, as an alternative to the notice and request for hearing procedures described in rules 193E—21.5(17A,543B) and 193E—21.6(17A,543B), issue a statement of charges and notice of hearing in a format similar to that used for licensee discipline.

193E—21.8(17A,543B) Factors to consider. The commission may consider the following when determining the amount of civil penalty to impose, if any:

1. Whether the amount imposed will be a substantial economic deterrent to the violation.
2. The circumstances leading to the violation.
3. The severity of the violation and the risk of harm to the public.
4. The economic benefits gained by the violator as a result of noncompliance.
5. The interest of the public.
6. The time lapsed since the unlawful practice occurred.
7. Evidence of reform or remedial actions.
8. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
9. Whether the violation involved an element of deception.
10. Whether the unlawful practice violated a prior order of the commission, court order, cease and desist agreement, consent order, or similar document.
11. The clarity of the issue involved.
12. Whether the violation was willful and intentional.
13. Whether the unlicensed person acted in bad faith.
14. The extent to which the unlicensed person cooperated with the commission.

193E—21.9(17A,543B) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the commission may seek an injunction in district court, enter into a consent agreement with the unlicensed person, or issue an informal cautionary letter.

These rules are intended to implement Iowa Code chapters 17A and 543B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 202, 204, 209, and 288
“Exemption Certificates”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2, 423.3, 423.31, 423.45, and 423.51

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to adopt new rules 701—202.17(423) and 701—204.8(423), adopt new 701—Chapter 209, and rescind and reserve 701—Chapter 288. 701—Chapter 288 contained a number of rules that the Department has determined are either unnecessary, obsolete, or duplicative of statutory language and that should be rescinded. Further, the Department determined that rules on returned merchandise, freight and other transportation charges, and premiums and gifts were better suited to be included in 701—Chapters 202, 204, and 213, which align more with those rules’ subject matters. Regulatory analyses for 701—Chapters 202 (IAB 10/18/23) and 204 (IAB 10/4/23) have already been published, so the rules that will be adopted and added to those chapters are included in this proposed rulemaking. The Regulatory Analysis for 701—Chapter 213 is published herein (IAB 11/1/23), so the rule that is being moved there is provided for in that Regulatory Analysis.

Additionally, the Department determined that the rule that described the Department’s interpretation of the underlying statutes relating to the use of exemption certificates would be better suited in a chapter solely on that topic, so the Department proposes readopting and moving it into 701—Chapter 209, which was previously reserved, in order to provide easier accessibility to the public. The Department proposes revisions to that rule in order to provide for better organization and clarification and to remove unnecessary, obsolete, and duplicative statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs of the proposed rulemaking beyond those that are imposed by the underlying statutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public will benefit from the proposed rulemaking since revising and reorganizing rules on the topic of exemption certificates into a separate chapter will provide easier accessibility to those rules and reduce confusion about the applicability and use of exemption certificates on purchases. Further, the public will benefit from the placement of rules on returned merchandise, freight and other transportation charges, and premiums and gifts into chapters that better align with those subject matters.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact associated with the proposed rulemaking beyond what is contained in the underlying statutes. There may be some quantitative impact on purchasers and sellers in using and accepting exemption certificates; however, there are multiple methods of exemption certification, including not using a specific form but just collecting the needed information, which is provided for in the rules on exemption certificates. The forms, in addition to the other methods, used in conjunction with the proposed rulemaking may have a positive quantitative impact for purchasers and sellers by clearly explaining the applicability, information required, and use of exemption certificates, reducing the likelihood of confusion and overcollection of tax on what is an exempt purchase.

- Qualitative description of impact:

The proposed rulemaking will reduce uncertainty about the use of exemption certificates since the rules on that topic will be in a chapter with that singular topic and other rules will be moved into chapters that better align with the subject matter of those rules, enabling the public to find guidance on those subjects in a more efficient manner. Further, the proposed revisions to the rules will add clarity, and obsolete and unnecessary language and rules will be eliminated, reducing confusion.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department to implement the proposed rulemaking beyond what would otherwise be required to administer the underlying statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the revision of repromulgated rules and the elimination of rules that are no longer necessary or are obsolete will provide clarity to the public, making it less likely that tax will be collected on what is an exempt sale or overcollected on what is a taxable sale.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There is no benefit to retaining 701—Chapter 288 since the rules that it contained were better suited to other chapters with more aligned subject matters or were no longer needed since they were obsolete or duplicated statutory language. The cost of inaction of updating the rules in the proposed rulemaking and placing them in better-suited chapters would lead to confusion and frustration. The benefits to the proposed rulemaking are to eliminate unnecessary and obsolete language and rules and to make it easier for the public to find guidance on topics by placing rules in chapters with similar topics.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose is to provide guidance about the use and applicability of exemption certificates along with the taxability of certain purchases. The Department

considered what information to provide in the rules and what information is provided on forms used for exemption certificates and concluded that this proposed rulemaking in conjunction with the available forms will help guide purchasers and sellers to provide and obtain the needed information when utilizing and accepting exemption certificates on purchases.

The Department considered the option of not implementing rules and determined the amendment and retention of some rules while eliminating others in addition to placing the retained rules in chapters more aligned to their subject matters would provide useful assistance to the public and reduce confusion.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the option of not implementing rules; however, it determined that the proposed rulemaking, in conjunction with the use of the applicable forms, was necessary to provide guidance and clarification to the public beyond what is provided in the underlying statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department determined that retention of rules in the proposed rulemaking with the proposed revisions will reduce confusion about the subjects of those rules. Proceeding without rules could negatively impact the public by limiting their knowledge about the applicability and procedures related to the use of exemption certificates.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business since it does not make any distinctions based on the size of a business and does not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** rule 701—202.17(423):

701—202.17(423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the sales price. No allowance is to be made for the return of any merchandise which (1) is exempt from either sales or use tax; or (2) has not been reported in the taxpayer's tax previously paid.

This rule is intended to implement Iowa Code section 423.31.

ITEM 2. Adopt the following new rule 701—204.8(423):

701—204.8(423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges is subject to sales or use tax is dependent upon the terms of the sale agreement.

204.8(1) Charges separately stated. When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the sales price of the freight or transportation charges is not subject to tax. This exemption does not apply to the service of transporting electrical energy or the service of transporting natural gas.

204.8(2) Charges not separately stated. When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the sales price of the freight or transportation charges become a part of the sales price of the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such a charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice.

204.8(3) Exemption. The sales price from charges for delivery of electricity or natural gas are exempt from tax to the extent that the sales price from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code chapter 423. The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.

204.8(4) Applicable charges. Freight and transportation charges include, but are not limited to, the following charges or fees: freight, transportation, shipping, delivery, or trip charges.

204.8(5) Examples.

EXAMPLE 1: Consumer ABC, located in Des Moines, contracts with supplier DEF, located in Waterloo, for DEF to sell gas and electricity to ABC. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is a taxable service. The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption in Iowa Code section 423.3(70).

EXAMPLE 2: Consumer ABC contracts with utility DEF for DEF to provide electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long-distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for transport of electricity and constitutes separate sales of electricity and transportation services. In these circumstances, amounts which ABC pays DEF for transport of the electricity are taxable.

EXAMPLE 3: As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and transportation of varying amounts of electricity and constitutes separate sales of electricity and transportation services. Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF, which DEF will in turn furnish to ABC. DEF must collect tax from ABC.

EXAMPLE 4: In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity which it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the transport of this electricity and constitutes separate sales of electricity and transportation services. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5: Again, ABC and DEF have contracted, as they did in Example 2, for DEF to sell and transport electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable as the entire amount paid is for the sale of tangible personal property.

EXAMPLE 6: Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas which is transported to its plant in processing the tangible personal property manufactured there. The receipts which EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing. In addition, utility DEF charges manufacturer EFG \$9.95 as a delivery fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of \$9.95 is also exempt from tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

ITEM 3. Adopt the following **new** 701—Chapter 209:

CHAPTER 209 EXEMPTION CERTIFICATES

701—209.1(423) Exemption certificates.

209.1(1) General provisions. A valid exemption certificate, whether furnished by the department or a seller must be fully completed, dated, and signed if a paper certificate is used.

a. A fully complete exemption certificate must include the following information:

- (1) Name of both the purchaser and seller.
- (2) The purchaser's address and type of business (e.g., retailer, manufacturer).
- (3) Reason for tax-exempt purchase (e.g., resale, processing).
- (4) When required, purchaser's identification number, (examples include Iowa-issued sales and use tax permit, another state's issued sales tax identification number, and Federal Employer Identification Number).

b. Either a fully completed exemption certificate or capture of the data elements listed in paragraph 209.1(1) "a" must be obtained at the time of sale or within 90 days subsequent to the date of sale.

c. Department-furnished exemption certificates are valid for up to three years.

209.1(2) Liability: The sales tax liability is on both the seller and purchaser; however, a seller is relieved of the liability if they obtain a fully completed exemption certificate or capture all the data elements listed in paragraph 209.1(1) "a."

a. If no exemption certificate or the data elements are obtained within 90 days of the sale, a seller obligated to collect tax from a purchaser is relieved of liability if they obtain a fully completed exemption certificate taken in good faith or provide proof the transaction was not subject to tax within 120 days of the department's request for substantiation.

b. No liability relief is available for sellers who do any of the listed activities in Iowa Code section 423.51(2).

c. The purchase of tangible personal property, specified digital products, or services which are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the purchaser of the responsibility for tax if at some later time the transaction is determined to be taxable.

d. A person who is selling tangible personal property, specified digital products, or services, but who does not make any taxable sales at retail, is not required to hold a permit. When this person purchases tangible personal property, specified digital products, or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services was purchased for the purpose of resale.

209.1(3) Other acceptable forms: Purchasers may also use a Multistate Tax Commission's Uniform Sales & Use Tax Resale Certificate, available at mtc.gov, or a Streamlined Sales Tax Agreement Certificate of Exemption, available on the department's website or at streamlinedsalestax.org, as an alternative to a department-issued certificate.

209.1(4) Blanket certificates. Sellers and purchasers with a recurring business relationship, as described in Iowa Code section 423.51(3)“d,” may use blanket exemption certificates covering more than one transaction.

This rule is intended to implement Iowa Code sections 423.45 and 423.51.

701—209.2(423) Fuel exemption certificates.

209.2(1) Use of fuel exemption certificates. The use and acceptance of fuel exemption certificates must comply with Iowa Code section 423.45(5). For purposes of this subrule, terms mean the same as defined in Iowa Code section 423.45(5).

209.2(2) Necessary information. A fuel exemption certificate, as defined in Iowa Code section 423.45(5), must be dated and contain the following information, including, but not limited to:

- a. The seller's name and address;
- b. The purchaser's name and address;
- c. The type of fuel purchased, such as electricity or propane;
- d. Description of the purchaser's business, such as farmer or manufacturer;
- e. A general description of the type of processing in which the fuel is consumer, such as grain drying, raising livestock, generating electricity, or the manufacture of tangible personal property;
- f. Claimed exemption percentage.

209.2(3) Additional documentation. The seller may demand from the purchaser additional documentation attached to the fuel exemption certificate which is reasonably necessary to support the claim of exemption for fuel consumed in processing; however, additional documentation is not required under the circumstances listed in Iowa Code section 423.45(5)“f.” In the absence of separate metering, documentation reasonably necessary to support a claim for exemption must consist of either an electrical consultant's survey or of a document prepared by the purchaser in accordance with the requirements of subrule 209.2(5).

209.2(4) Exemption determination. When the amount of the exemption is modified pursuant to Iowa Code section 423.45(5)“d,” a purchaser must notify the seller of any change in percentage.

209.2(5) Determining percentage of electricity used in processing. When electricity is purchased for consumption both for processing and for taxable uses, and the use of the electricity is recorded on a single meter, the purchaser must allocate the use of the electricity according to taxable and nontaxable consumption if an exemption for nontaxable use is to be claimed. The calculations which support the allocation, if properly performed, can serve as the documentation reasonably necessary to support a claim of exemption for fuel used in processing. The following method with its alternative table may be used to determine the percentage of electricity used on the farm or in a factory which is exempt by virtue of its being used in processing. Paragraph 209.2(5)“e” provides information on alternative methods of computing exempt use, including exempt use by a new business. First, the base period for the calculations must be selected.

a. Ordinarily, the 12 months previous to the date upon which the exemption is calculated are used as the base period for determining the percentage of electricity exempt as used in processing. This immediately previous 12-month period is used because it is a span of time which is (1) recent enough to accurately reflect future electric usage; (2) extended enough to take into account variations in electrical usage resulting from changes in temperature occurring with the seasons; and (3) is not so long as to require unduly burdensome calculations. However, individual circumstances can dictate that a shorter or longer period than 12 months will be used or that some 12-month period other than that immediately previous to the date upon which the exemption certificate is filed, will be used.

EXAMPLE 1: Farmer A files a fuel exemption certificate for the period beginning January 1, 2022. The year 2021 had a very mild winter, a relatively cool summer, and a very dry autumn. Farmer A uses no electricity for grain drying and substantially less electricity than usual for heating and cooling his livestock buildings. Farmer A must use a 12-month period which is more representative of his usual exempt electrical consumption than that of January through December 2021.

EXAMPLE 2: Company A manufactures its product in a factory which has no windows and is heavily insulated. The factory always runs 40 hours per week, 52 weeks per year. Because of these and other circumstances, Company A's electrical usage does not vary significantly from month to month, and it is easy enough to document this. Company A can calculate its percentage of exempt use of electricity based on a one-month, rather than a 12-month, period.

EXAMPLE 3: Company B manufactures widgets. The "economic cycle" for widget production is, on average, 36 months long. During this economic cycle, there are times when, for months at a time, the factory will operate three shifts. At other times, for weeks at a time, the entire factory will be shut down and its personnel laid off. The only accurate way to determine the exempt percentage of electricity used is to calculate electrical use over the entire economic cycle. Therefore, 36 months, rather than 12 months, would be the base period.

b. Calculating kilowatts used per hour by various electrical devices. The first step in computing the percentage of exemption is to determine the number of kilowatts used per hour for each device in the farm or factory. If kilowatts consumed per hour of a device's use is not listed on the device or otherwise readily obtainable, formulas can be used to determine this information.

(1) Lights. For incandescent bulbs, add rated wattages and divide by 1,000. For fluorescent lights, add rated wattages plus an additional 20 percent of rated wattages, then divide by 1,000.

Incandescent Lights:

$$\frac{\text{Watts}}{1,000} = \text{Kilowatts Per Hour}$$

Fluorescent and Other High Intensity Lights:

$$\frac{\text{Watts} + .20 (\text{Watts})}{1,000} = \text{Kilowatts Per Hour}$$

(2) Devices other than lights. For these devices, use the wattage rating given by the manufacturer and divide by 1,000 to obtain approximate kilowatts used per hour of operation.

$$\frac{\text{Watts}}{1,000} = \text{Kilowatts Per Hour}$$

If an appliance does not list a watt rating, tables provided by Iowa State University Cooperative Extension Service can be used especially by farmers who are attempting to compute their exempt percentage of electricity used. Persons using a table are reminded to convert watts to kilowatts before proceeding to further calculations.

c. The average number of kilowatts consumed per hour of operation for any one device must next be multiplied by the total number of hours which the device is operated during the base period. A person may use intermediate calculations.

(1) EXAMPLE 1: Assume that a machine used in processing consumes 20 kilowatts per hour of operation. The machine is operated, during a 12-month base period, 40 hours per week during 50 weeks. The machine is not placed in operation when the factory is closed for two weeks' vacation. Exempt use is calculated as follows:

$$\begin{matrix} \text{Kilowatts} & & \times & & \text{Hours operated} & & \times & & \text{Weeks operated in 12-month} \\ \text{per hour} & & & & \text{per week} & & & & \text{period equals number of} \\ & & & & & & & & \text{exempt kilowatt hours} \end{matrix}$$

In this example, $20 \times 40 \times 50 = 40,000$ exempt kilowatt hours.

(2) EXAMPLE 2: Assume that a grain dryer uses 30 kilowatts per hour of operation. During a 12-month base period, the grain dryer is used in processing 200 hours per month, for 3 months. The calculation for total number of kilowatt hours of exempt use for the 12-month period is as follows:

$$\begin{matrix} \text{Kilowatts} & & \times & & \text{Hours operated} & & \times & & \text{Number of months of exempt} \\ \text{per hour} & & & & \text{per month} & & & & \text{use equals total number of} \\ & & & & & & & & \text{exempt kilowatt hours} \end{matrix}$$

In this example, $30 \times 200 \times 3 = 18,000$ exempt kilowatt hours.

(3) EXAMPLE: The following is a very simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

d. *Example worksheet.* The following is a simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

| | Kilowatts Per Hour of Operation | Average Hours of Operation Per 12-Month Base Period | Average Kilowatt Hours Per 12-Month Base Period | Total |
|--------------------------|---------------------------------------|--|--|-----------|
| All Exempt Usage | | | | |
| Production Machine #1 | 10 | 1000 | 10000 | |
| Production Machine #2 | 10 | 1000 | 10000 | |
| Other | 10 | 1000 | 10000 | |
| Total Exempt Usage | | | | 30000(A) |
| All Taxable Usage | | | | |
| Air Conditioners | 10 | 3000 | 30000 | |
| General Lighting | 10 | 3000 | 30000 | |
| Office Equipment | 10 | 3000 | 30000 | |
| Space Heaters | 10 | 3000 | 30000 | |
| Other | 10 | 3000 | 30000 | |
| Total Taxable Usage | | | | 150000(B) |
| Total—All Usages | | | | 180000(C) |

$$\frac{30000}{180000} \text{ or } \frac{A}{C} = \text{Percentage of Electricity Purchase Qualifying for Exemption} = 16.60\%$$

The number actually used in the base period can be determined by reference to billings for the base period. If the number of kilowatt hours calculated to have been used does not approximate the number actually used in the base period, the calculations are deficient and should be performed again. Once the precise percentage of exemption has been calculated, that percentage must be applied during any period for which a purchaser is requesting exemption. Any substantial and permanent change in the amount of

electricity consumed or in the proportion of exempt and nonexempt use of electricity is an occasion for recomputing the exempt percentage and for filing a new exemption certificate.

e. Alternative methods. The following are nonexclusive alternatives to the above method of determining the percentage of electricity which is exempt because it is used in processing.

(1) If currently only one meter exists to measure both exempt and nonexempt use of electricity, the most accurate method of determining exempt and nonexempt use may be separate metering of these two uses. This possibility is especially practical if all exempt use results from the activities of one machine, however large.

(2) If separate metering is impossible or impractical, it may be useful to employ the services of an energy consultant. If using an energy consultant's service is impractical, it may be possible to secure, from the manufacturer of a machine used in processing, the number of kilowatts which a machine uses per hour of operation. Often, these manufacturer's studies give a more accurate measure of a machine's use of electricity than the formulas set out in paragraph 209.2(5) "b" above. This circumstance is especially true with regard to large electric motors.

(3) If a business is new, and no historical data exists for use in calculating exempt and nonexempt percentages of electricity or other fuel consumed, any person calculating future exempt use must make the best projections possible. If calculating future exempt use with no past historical data to serve as a basis for the calculations, it is suggested that conservative estimates of exempt use be made. Using these conservative estimates can avoid future liability for sales tax on the part of the purchaser of the electricity. Possibly, in calculating exempt use of fuel for a new business, historical data from existing similar businesses can be used if available from persons not in direct competition to the person claiming the exemption. The calculation and the exemption certificate must be updated once data from an accurate 12-month cycle, or other appropriate cycle, is available.

209.2(6) Applicability. The provisions of subrule 209.2(5) explaining the determination of the percentage exemption for electricity also apply to other types of fuel such as natural gas, LP, etc., when used for exempt purposes.

This rule is intended to implement Iowa Code sections 423.45.

701—209.3(423) Special certificates of beer and wine wholesalers. Beer or wine purchased from a wholesaler holding a Class A or F permit has been purchased for resale if the purchaser provides the wholesaler with a retail beer or wine permit or liquor license number. A wholesaler's record of account with an individual retailer is a complete and correct exemption certificate for the purposes of beer or wine sales and provides all the protection which the usual exemption certificate, as described in rule 701—209.1(423) provides if the record of account contains the retailer's beer or wine permit or liquor license number and all other information concerning the account is taken in good faith by the wholesaler. The words "beer," "permit," "retailer," "wholesaler," and "wine" have the same definitions for the purposes of this rule as the definitions given them in Iowa Code section 123.3.

This rule is intended to implement Iowa Code section 423.45.

ITEM 4. Rescind and reserve **701—Chapter 288.**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 210
“Purchases by Businesses”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99F.10(6) and 423B.5
State or federal law(s) implemented by the rulemaking: Iowa Code section 423.2 and 423.3

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#
tel.meet/pmv-smfj-zwf?pin=4428711103686

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to repromulgate Chapter 210.

The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete or unnecessary or that duplicate statutory language. This chapter also includes rules that were previously in other chapters that the Department has determined are more closely related to the subject matter of this chapter. This chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of purchases by businesses.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any classes of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public, particularly businesses, will benefit from clarification about the taxability of purchases by businesses.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact of the proposed rules.

- Qualitative description of impact:

These rules reduce uncertainty about the taxability of purchases by businesses. Failing to adopt them would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, the rules clarify the taxability of purchases by businesses, making it more likely that the correct amount of tax will be collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about the taxability of purchases by businesses.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on taxing purchases by businesses and when exemptions apply.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not seriously consider any alternatives.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without these rules would lead to confusion about the taxability of purchases by businesses.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 210 and adopt the following new chapter in lieu thereof:

CHAPTER 210
PURCHASES BY BUSINESSES

701—210.1(423) Wholesalers and jobbers selling at retail. Sales made by a wholesaler or jobber to a purchaser for use or consumption by the purchaser or in the purchaser's business and not for resale are considered retail sales and subject to tax, even if sales are made at wholesale prices or in wholesale quantities.

This rule is intended to implement Iowa Code section 423.2(1).

701—210.2(423) Materials and supplies sold to retail stores. The sales price of materials and supplies sold to retail stores for their use and not for resale shall be subject to tax. The retail store is the final buyer and ultimate consumer of such items as fuel, cash registers, adding machines, typewriters, stationery, display fixtures and numerous other commodities that are not sold by the store to its customers.

This rule is intended to implement Iowa Code section 423.2.

701—210.3(423) Tangible personal property and specified digital products purchased for resale but incidentally consumed by the purchaser. A retailer engaged in the business of selling tangible personal property or specified digital products who takes merchandise from stock for personal use, consumption, or gifts shall report these items as "goods consumed" on the sales and use tax return and remit sales tax and any applicable local option sales tax on the purchase cost of the items. This rule does not authorize purchase for resale of items intended to be used by the retailer.

This rule is intended to implement Iowa Code section 423.2.

701—210.4(423) Property furnished without charge by employers to employees. When an employer furnishes tangible personal property, including meals, or specified digital products to employees without charge or uses merchandise for gifts or consumption, the cost to the employer of the tangible personal property or specified digital products shall be subject to sales tax and any applicable local option sales tax and reported on the employer's return as "goods consumed" if the employer has not previously paid tax to a retailer. However, the food purchased by the employer for meals prepared for employees is not subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.5(423) Owners or operators of buildings. Owners or operators of buildings who purchase items to be used by them in maintaining the building are the users or consumers and shall pay sales tax to their suppliers.

210.5(1) When owners or operators of buildings remeter and bill their tenants for electric current, gas, or any other taxable service consumed by the tenants, such owners or operators shall be considered to be purchasing the electric current, gas, or other taxable service for resale. These owners or operators shall hold permits and shall be liable for the tax upon the sales price of the sale of such service. When the building owners or operators purchase all of the electric current, gas, or other services for resale and consume a portion in the operation of the building, they shall be liable for sales tax on that portion consumed, based upon the cost of the electric current or gas purchased for resale.

210.5(2) When the management of a building sells heat to other buildings or other persons and charges for such service as a sale of heat, such transactions are considered sales at retail and shall be subject to tax.

210.5(3) When heat is furnished to tenants as a service to them, incidental to the renting of the space, there shall be no tax. When heat is sold separately and billed to the tenants separately, such service shall be taxable.

210.5(4) When a building manager makes sales of tangible personal property, specified digital products, or taxable services at retail, the manager shall be required to procure a permit and collect and remit tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.6(423) Blacksmith and machine shops. When a blacksmith or machine shop operator fabricates finished tangible personal property from raw materials and sells such property at retail, tax shall apply on the total charge which includes the fabrication labor. Rule 701—211.28(423) contains information on the taxable service of machine operation.

This rule is intended to implement Iowa Code section 423.2.

701—210.7(423) Truckers engaged in retail business. Truckers or haulers engaged in the sale of tangible personal property to ultimate users or consumers shall be deemed as making taxable sales.

This rule is intended to implement Iowa Code section 423.2.

701—210.8(423) Out-of-state truckers selling at retail in Iowa. Truckers or persons engaged in the sale of tangible personal property at retail in Iowa based outside of Iowa by means of hauling the tangible personal property into the state shall collect and remit Iowa sales tax. To ensure the remission of tax on Iowa sales, the department has the statutory authority to require a bond deposit from sellers classified in this rule. This right shall be exercised when necessary.

This rule is intended to implement Iowa Code section 423.2.

701—210.9(423) Iowa dental laboratories.

210.9(1) Sales by dental laboratories. Iowa dental laboratories are engaged in selling tangible personal property to Iowa dentists. Such laboratories shall hold a retail sales tax permit and collect and report all tax due from dentists in all transactions involving taxable retail sales.

210.9(2) Purchases not subject to tax. Iowa dental laboratories shall not be subject to tax on those purchases of tangible personal property that form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or would be exempt if purchased directly by the dentist's patient.

210.9(3) Purchases subject to tax. Iowa dental laboratories are the final user or consumer of all tangible personal property, including tools, office supplies, equipment, and any other tangible personal property not otherwise exempt. Sales tax shall be remitted to its Iowa supplier when purchasing in this state, and use tax shall be remitted directly to the department when such items are purchased from out-of-state suppliers, unless the out-of-state supplier is registered with the department and collects sales or use tax for the state.

This rule is intended to implement Iowa Code sections 423.2 and 423.33.

701—210.10(423) Dental supply houses. Dental supply houses are engaged in selling tangible personal property to dentists and dental laboratories. Such dental supply houses shall collect and report all tax due from purchasers in all transactions involving taxable retail sales. This shall not include sales of tangible personal property that will form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or would be exempt if sold directly to an individual.

This rule is intended to implement Iowa Code section 423.2.

701—210.11(423) News distributors and magazine distributors. News distributors and magazine distributors engaged in intrastate sales of magazines and periodicals in Iowa to vendors that are engaged in part-time distribution of such magazines are deemed to be making sales at retail. The sales price of such sales shall be subject to sales tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.12(423) Magazine subscriptions by independent dealers. The sales price of the sale of subscription magazines or periodicals derived by independent distributors or dealers in the state of Iowa that secure such subscriptions as independent dealers or distributors shall be subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.13(423) Sales by finance companies. A finance company that repossesses or acquires tangible personal property or specified digital products in connection with its finance business and sells tangible personal property or specified digital products at retail in Iowa shall be required to hold a permit and remit the current rate of tax on the sales price of such sales at retail in Iowa.

This rule is intended to implement Iowa Code section 423.2.

701—210.14(423) Bowling.

210.14(1) Pinsetters. The rental of automatic pinsetters by bowling alley operators is subject to the imposition of sales tax since the pinsetters are not resold to patrons. Therefore, the operator of the alley is considered the consumer of the pinsetter rental.

210.14(2) Shoes. The rental of bowling shoes is subject to the imposition of sales tax as equipment rental.

210.14(3) Score sheets. The sales of bowling score sheets to operators of bowling establishments are subject to the imposition of sales tax since the operators are the consumers of such score sheets.

This rule is intended to implement Iowa Code section 423.2.

701—210.15(423) Various special problems relating to public utilities.

210.15(1) Late payment charges. The amount of any charge, commonly called a “late payment charge,” imposed by a public utility on its customers shall not be subject to tax if the charge is in addition to any charge for the utility’s sale of its commodity or service and is imposed solely for the privilege of deferring payment of the purchase price of the commodity or service and furthermore is separately stated and reasonable in amount.

210.15(2) Due dates. The date of the billing of charges for a public utility’s sales shall be used to determine the period in which the utility shall remit tax upon the amount charged. The utility shall remit tax upon the sales price of any bill during the period that includes the billing date. Thus, if the date of a billing is March 31 and the due date for payment of the bill without penalty is April 20, tax upon the sales price contained in the bill shall be included in the return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a deposit.

210.15(3) Franchise fees. In general, the amount of any franchise fee that a public utility pays to a city for the privilege of operating and that is directly or indirectly passed on to the utility’s customers shall be included in sales price subject to tax. This will be true even if the amount of the franchise fee is computed as a percentage of other sales price subject to tax and is separately stated and separately charged to the immediate consumer of the commodity or service. However, if, in the future, it becomes lawful for a city to impose a sales or use tax and such tax is imposed upon the customers of public utilities in the guise of a franchise fee, the amount of this city excise tax shall not be subject to Iowa tax if the tax imposed by the city is separately stated and separately billed.

This rule is intended to implement Iowa Code section 423.2(2).

701—210.16 Reserved.

701—210.17(423) Communication services furnished by hotel to its guests. When a hotel purchases telephone communication services from telephone companies and furnishes those services to guests, tax shall apply to the entire charge which the hotel makes to its guests for such communication service, regardless of whether a guest’s calls are local or long-distance within the state. However, the hotel would purchase any communication service which it furnishes for a charge to a guest exempt from tax as a service purchased for subsequent resale.

This rule is intended to implement Iowa Code section 423.2(2).

701—210.18(423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the sales price from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—210.19(423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The sales price shall be taxable, even when the sales price of the sign includes a charge for maintenance or repair service in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—210.20(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations. The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, including but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an “account payable” qualifies as consideration as well as the actual exchange of money or its equivalent.

This rule is intended to implement Iowa Code section 423.1(50).

701—210.21(423) Mergers which do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one business to another pursuant to a statutory merger, the transfer is not a “sale” in which the sales price is subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute; (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging business to a surviving business and not for any consideration; and (3) the merging business is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

EXAMPLE A: Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement which results in the transfer of A’s assets to C and the dissolution of A. In return, A’s stockholders receive stock in C. The sales price of A’s transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B: Corporation H buys all the assets of Corporation I, which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property, and the sales price of the sale may be subject to Iowa sales tax. However, 701—subrule 18.28(2) contains more information concerning a casual sale exemption applicable to the liquidation of a business.

701—210.22(422,423) Railroad rolling stock. Railroad rolling stock is that portion of railroad property which is incapable of being affixed or annexed on any one place but is wholly intended for movement on rails to transport persons or property whether for hire or not for hire and includes materials and parts used therefor. Locomotives, railroad cars, and materials and parts used therefore shall be exempt from tax. This exemption includes maintenance-of-way equipment which is used to transport persons or property. Also, fuel and lubricants used in railroad rolling stock are materials used in railroad rolling stock and their sales are exempt from tax. Enumerated services are not railroad rolling stock and are not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(71).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 211
“Taxable Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2, 423.3, and 423.36

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 211 and adopt new Chapter 211. The Department proposes amendments to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of services.

Analysis of Impact

- Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification about the taxability of services.
- Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact from the proposed rules.
 - Qualitative description of impact:
The proposed rules reduce uncertainty about the taxability of services. Failing to adopt them would lead to confusion, questions to the Department, and potential errors in collection.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department related to implementing the proposed rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are no costs relating to the proposed rules. The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about the taxability of services.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on the taxability of services.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not seriously consider any alternative methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without the proposed rules would lead to confusion about the taxability of services.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small businesses. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 211 and adopt the following **new** chapter in lieu thereof:

CHAPTER 211
TAXABLE SERVICES

701—211.1(423) Definitions and scope.

211.1(1) Definitions. For purposes of this chapter:

“Persons engaged in the business of” means persons who offer the named service or services to the public or others in exchange for consideration, regardless of whether such person offers the service or services continuously, part-time, seasonally, or for short periods.

“Repair” includes the mending or renovation of existing parts and the replacement of defective parts or subassemblies. Repair does not include the installation of new parts or accessories that are not replacements.

“Specified digital products” means the same as defined in Iowa Code section 423.1.

211.1(2) Scope. Iowa imposes tax upon the sales price of rendering, furnishing, or performing at retail services listed in Iowa Code section 423.2(6). Some of these services are described in more detail in this chapter.

This rule is intended to implement Iowa Code section 423.2.

701—211.2(423) Services purchased for resale. Services purchased for resale are not subject to sales tax. A service is purchased for resale when it is subcontracted by the person contracted to perform the service. Tax imposed on services is collectible at the time the service is complete even if the services are not purchased by the ultimate beneficiary.

EXAMPLE 1: D owns an auto repair shop, and F brings an automobile in to have the air conditioner fixed. D is unable to fix the unit, so the car is sent to G who is an air conditioning specialist. The sale of G’s service to D is a sale for resale by D to F, so there is no tax imposed. The sale from D to F is subject to sales tax.

EXAMPLE 2: R operates a retail farm implement dealership. R accepts a motorboat as part consideration for a piece of farm equipment. R then contracts with D to repair the motor on the boat. R does not normally sell motorboats in the regular course of R’s business. Therefore, the repair service performed by D for R is subject to sales tax.

This rule is intended to implement Iowa Code section 423.3(2).

701—211.3(423) Fur storage and repair.

211.3(1) In general. Persons engaged in the business of storing fur for preservation and future use and refurbishing, repairing, and renovating fur, including the addition of new skins and furs, are selling a service subject to sales tax.

211.3(2) Definition. For purposes of this rule:

“Fur” includes both natural fur and synthetic products resembling fur.

This rule is intended to implement Iowa Code section 423.2(6)“u.”

701—211.4(423) Investment counseling. Persons engaged in the business of counseling others relative to investment in or on the disposition of property or rights, whether real, personal, tangible, or intangible, and who charge for that counseling, are selling a service subject to sales tax. This includes investment counseling rendered, furnished, or performed by a trust department.

This rule is intended to implement Iowa Code section 423.2(6)“e.”

701—211.5(423) Bank and financial institution service charges.

211.5(1) In general. The service charges imposed by financial institutions relating to a depositor’s checking account are subject to sales tax. If the same service is performed by a financial institution relating to an account that does not qualify as a checking account, the service charge imposed by the financial institution is not subject to sales tax.

211.5(2) Definitions. For purposes of this rule:

“Bank” means an institution empowered to do all banking business, including issue negotiable notes, discount notes, receive deposits payable on demand, and buy and sell bills of exchange. Savings and loan associations and other financial institutions not commonly considered to be banks do not fall within the meaning of a bank.

“*Checking account*” means an account on which withdrawals may be made from the account via a written instrument, including but not limited to a check, draft, or negotiable order of withdrawal (NOW). Whether or not an account pays interest does not determine whether an account qualifies as a checking account. The term “checking account” is characterized by its general meaning rather than a technical definition, and other types of accounts, not described in this rule, may qualify as checking accounts. Certificates of deposits do not qualify as checking accounts.

“*Financial institutions*” means the same as defined in Iowa Code section 423.2(6) “*f.*”

211.5(3) *Checking account charges.* All charges relating to a checking account are subject to sales tax, including but not limited to charges for the following:

- a. Withdrawals made by check or bank card.
- b. Nonproprietary automatic teller machine (ATM) transactions.
- c. Transferring funds from one account to another (if billed to a checking account).
- d. Stop payment.
- e. Debit card replacement.
- f. Copy and research.
- g. Bill payment.
- h. Returned deposit items.
- i. Issuance of a certified check, drawn from a particular account.

211.5(4) *Other service charges.* Service charges not usually subject to sales tax by virtue of having no relationship to checking accounts include but are not limited to:

- a. Safety deposit box rentals.
- b. Mortgage and loans.
- c. Trust department fees for probating estates, administering trusts, administering agency accounts, administering pension and profit-sharing plans, serving as stock transfer agents or registrars, serving as farm managers, and fees or commissions charged to customers for handling security transactions. Some of these services may qualify as investment counseling and may be subject to sales tax.
- d. Real estate appraisals.
- e. Servicing real estate loans.
- f. Contract collection and collection not related to the maintenance of a checking account.
- g. Special lockbox handling.
- h. Finance charges, including those for credit cards.
- i. Escrow agent.
- j. Safekeeping, handling and cashing coupons or certificates kept in a bank’s possession.
- k. Penalties on early withdrawal for saving certificates.
- l. Purchasing or selling securities for customers, unless used as a disguise for investment counseling fees.
- m. Real estate collection exchange, including collecting and transferring mortgage payments.
- n. Traveler’s or a similar type of check, bank cashier’s checks, bank drafts, or money orders with no relation to a customer’s checking account.
- o. Check exchanges.
- p. Noncustomer point of sale or ATM access fees or service charges.

211.5(5) *Exceptions.* Fees charged to a checking account depositor for a depositor’s failure to adhere to contractual obligations with a bank or financial institution are not subject to sales tax. These charges, such as fees for overdrafts or returned checks, are penalties rather than service charges. Bank service charges that are never assessed against the expense of maintaining a checking account are not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*f.*”

701—211.6(423) Barber and beauty.

211.6(1) *In general.* Persons engaged in the business of barbering and beauty are selling a service subject to sales tax.

211.6(2) Definitions. For purposes of this rule:

“*Barbering*” means the same as defined in Iowa Code section 158.1.

“*Barbershop*” means the same as defined in Iowa Code section 158.1.

“*Beauty*” means the same as “cosmetology” and “esthetics” as those terms are defined in Iowa Code section 157.1.

211.6(3) Sales tax permits.

a. Each barber, beauty or other beautification shop or establishment shall receive only one permit and remit tax as one enterprise when operated under a common management.

b. When an operator leases space and is an independent operator, the lessee shall notify the department and secure a sales tax permit whereby the lessee will be responsible directly for the sales tax due. In order to be considered independent, the lessee must also be independent from the lessor for the purposes of withholding income tax, unemployment compensation, and social security taxes.

211.6(4) Leasing. The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee’s sales, the lessor shall, after the name of each lessee, show the amount of net taxable sales made by the lessee on each report to the department and which net taxable sales are included in the lessor’s return. Rule 701—288.11(423) contains more information.

This rule is intended to implement Iowa Code sections 423.2(6)“g” and 423.36.

701—211.7(423) Photography and retouching.

211.7(1) Definitions. For purposes of this rule:

“*Photography*” means the art or process of capturing or producing still or moving images, films, or videos using any device designed to record or capture images, film, or video. Taxable sales associated with photography services include but are not limited to sitting or photoshoot fees and fees relating to taking or producing photographs or videos, including editing.

“*Retouching*” means the alteration, restoration, or renovation of a picture, film, video, image, artwork, likeness, or design.

211.7(2) In general. The sales price of photography services and retouching services are taxable regardless of whether the service results in the production of tangible personal property or specified digital products. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

EXAMPLE 1: Standalone photography service. X operates a photography business where customers can purchase a half-hour photoshoot session for \$50 and may purchase physical or electronic copies of any photographs taken during the photoshoot for \$10 each. Y purchases a half-hour photoshoot from X for \$50; however, after viewing the images, Y decides not to purchase any copies of any of the photographs. X must collect and remit sales tax and any applicable local option tax on \$50, the cost of the photography service, even though Y decided not to purchase any of the resulting photographs.

EXAMPLE 2: Photography service and sale of photographs. Same facts as Example 1, except that Y decides to purchase ten photographs for \$10 each. X must collect and remit sales tax and any applicable local option tax on \$150, the total cost of the \$50 photography service and the \$100 cost of the ten photographs. Here, the photography service is taxable and the photographs are taxable as the sale of tangible personal property if they are delivered in hard copy or as the sale of specified digital products if they are delivered electronically.

211.7(3) Tax shall not apply to the sales price of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sales price of materials to photographers or producers which is used in the processing of photographs or photostat copies.

211.7(4) Sourcing. More information about how various aspects of photography services may be sourced is available in 701—subrule 205.2(1).

This rule is intended to implement Iowa Code section 423.2(6)“bo” and “bp.”

701—211.8(423) Household appliance, television, and radio repair.

211.8(1) *In general.* Persons engaged in the business of repairing household appliances, television sets, or radio sets are selling a service subject to sales tax.

211.8(2) *Definition.* For purposes of this rule:

“*Household appliances*” includes all mechanical devices normally used in the home, whether or not the appliances are actually used in the home.

This rule is intended to implement Iowa Code section 423.2(6) “y.”

701—211.9(423) Machine operators.

211.9(1) *In general.* Persons engaged in the business of operating machines of all kinds that belong to other persons and charge a fee for operating are selling a service subject to sales tax. Operation of the machine must be the central function of the service being performed and not incidental to the performance of the service the operator was hired to perform.

211.9(2) *Definitions.* For purposes of this rule:

“*Machine*” includes but is not limited to typewriters, computers, calculators, cash registers, and manufacturing machinery and equipment. “*Machine*” does not include telephones, automobiles, or airplanes.

“*Machine operator*” is a person who manages, controls, and conducts a mechanical device or a combination of mechanical powers and devices used to perform a function and produce a certain result or effect.

211.9(3) *Machine operators as employees.* The services of a machine operator are not subject to sales tax if the operation of machinery is by an employee directly for an employer. Rule 701—211.3(423) contains information about services performed by an employee for an employer.

EXAMPLE 1: Employee A is hired to perform data entry on a computer for A’s employer. While Employee A is performing the service of a machine operator, because Employee A is performing the service directly for A’s employer, A’s service is not subject to sales tax.

EXAMPLE 2: Through a temporary employment agency, Worker B performs data entry on a computer for Company Z. Company Z pays a set per-hour fee for data entry services. Worker B is performing the service of a machine operator, not directly for Company Z but for the temporary employment agency. Company Z must pay sales or use tax on the fee imposed by the temporary employment agency. Rule 701—211.23(423) contains information about the service of private employment agencies.

EXAMPLE 3: Through a temporary employment agency, Worker C performs telemarketing services for Company X. Because Worker C is operating a telephone, which is not considered a machine for purposes of this rule, Company X would not pay sales or use tax on the fee imposed by the temporary employment agency.

EXAMPLE 4: Company Y hires Lawyer D through a temporary employment agency. Lawyer D spends most of the work time performing legal research and writing memoranda, both of which are done at a computer. Lawyer D is not a machine operator just because Lawyer D uses a computer. Lawyer D was hired by Company Y to perform legal services. Lawyer D’s use of the computer is incidental to the legal services Lawyer D was hired to perform.

EXAMPLE 5: Company X hires Employee A as a purchaser. In this role, Employee A procures materials for Company X, negotiates and manages purchasing agreements, and communicates with vendors. To perform these job duties, Employee A spends the majority of working hours on a computer. Employee A is not a machine operator, because the central function of the job is as a purchaser and the computer use is incidental to the performance of job duties.

This rule is intended to implement Iowa Code section 423.2(6) “ad.”

701—211.10(423) Machine repair of all kinds.

211.10(1) *In general.* Persons engaged in the business of repairing machines of all kinds are selling a service subject to sales tax.

211.10(2) *Definition.* For purposes of this rule:

“*Machine*” means a mechanical device or combination of mechanical powers and devices used to perform some function and produce a certain result or effect. Machines include devices that have moving parts, are operated by hand, and are powered by a motor, engine, or other form of energy.

211.10(3) Musical instruments. For purposes of this rule, a musical instrument does not constitute a machine.

EXAMPLE: Person A owns an electric piano and an acoustic upright piano. Both pianos require repairs; the electric piano needs a new power cord, and the acoustic piano needs keys replaced. The electric piano repair would be taxable under 701—subrule 219.13(6). The repair to the acoustic piano is not taxable.

This rule is intended to implement Iowa Code section 423.2(6) “*ae.*”

701—211.11(423) Oilers and lubricators.

211.11(1) In general. Persons engaged in the business of oiling, changing oil in, lubricating, or greasing vehicles and machines of all types are selling a service subject to sales tax.

211.11(2) Definition. For purposes of this rule:

“*Machine*” includes those items with moving parts or powered by a motor or engine or other form of energy. “*Machine*” also includes heavy equipment vehicles or implements, whether such equipment functions in a state of rest or a state of motion.

This rule is intended to implement Iowa Code section 423.2(6) “*ah.*”

701—211.12(423) Parking facilities.

211.12(1) In general. Persons engaged in the business of operating a parking facility for a fee are selling a service subject to sales tax.

211.12(2) Definition. For purposes of this rule:

“*Parking facility*” means any place that is used for parking a vehicle for consideration. It is irrelevant whether the charge is by the hour, day, month, or any other period of time.

This rule is intended to implement Iowa Code section 423.2(6) “*ak.*”

701—211.13(423) Private employment agency, executive search agency.

211.13(1) In general. Private employment agencies engaged in the business of providing listings of available employment, counseling others with respect to future employment, or aiding another in any way to procure employment are selling a service subject to sales tax, regardless of whether the service is rendered for a prospective employer or prospective employee.

211.13(2) Principal place of employment outside of Iowa. Services rendered by private employment agencies which place a person and where the person’s principal place of employment is outside of Iowa are not subject to Iowa sales tax. For purposes of this rule, “principal place of employment” means the primary work location of the employee.

EXAMPLE: Company B, a sales company, contracts with Agency C, an employment agency, to secure a salesperson to travel throughout Iowa, Missouri, and Nebraska. Both Company B and Agency C are located in Iowa. Agency C is successful in finding a salesperson for Company B. Though the salesperson will be traveling throughout the three states, because Company B, the principal place of the salesperson’s employment, is located within Iowa, Agency C’s service is subject to Iowa sales tax.

211.13(3) Executive search agencies. Executive search agencies that are engaged in the business of securing employment for top-level management positions are selling a service subject to sales tax, regardless of whether the executive search agency is licensed under Iowa Code chapter 94A or not. Executive search agencies’ services performed in Iowa are subject to Iowa sales tax regardless of whether the principal place of employment for the person the agency placed into employment is located within Iowa.

211.13(4) Private employment versus executive search agencies. To determine if an agency is an executive search agency or a private employment agency, the following nonexhaustive lists of elements may be used to distinguish the two.

a. Private employment agency:

- (1) All levels of jobs in an organization. All salary levels.
- (2) Large number of clients at all times. Both possible employers and employees.
- (3) Individual's résumé circulated to many possible employers.
- (4) No extensive analysis of the position or the individual.
- (5) Normally does not make travel arrangements for interviews, does not conduct salary negotiations, does not perform detailed follow-up studies.
- (6) Paid by either the company or the job seeker.
- (7) Paid on a contingent-fee basis. Paid only if a referred person is hired.
- (8) Does engage in general advertising of available positions.
- (9) Overall placement of an individual is not as extensive or sophisticated.
- b. Executive search agency:
 - (1) Top-level management positions.
 - (2) Serve only a few clients at one time. Employers only.
 - (3) Send information regarding one individual to one possible employer only. Résumés never circulated to other possible employers.
 - (4) Extensive analysis of the position to be filled. Extensive analysis of the individuals who are candidates. Preparation of detailed professional assessment of strengths and weaknesses of individuals.
 - (5) Make travel arrangements for interviews, conduct salary negotiations, perform follow-up studies.
 - (6) Only paid by the company seeking the employee.
 - (7) Paid on retainer or by an hourly charge or by contract. Paid whether or not an individual is hired.
 - (8) Does not advertise available positions.
 - (9) Overall placement of an individual requires extensive and sophisticated analysis of position and individual.

This rule is intended to implement Iowa Code section 423.2(6) "ap" and "aq."

701—211.14(423) Storage of household goods and mini-storage.

211.14(1) *In general.* The sales price from the sale of the storage of household goods and mini-storage are subject to sales and use tax.

211.14(2) *Definitions.* For purposes of this rule:

"Household goods" means tangible personal property ordinarily located in a person's residence that is not inventory.

"Mini-storage" means a commercial operation that provides individual storage units of various sizes to persons for the purpose of storing tangible personal property. "Mini-storage" includes a secured area in which vehicles, boats, recreational vehicles, camping trailers and other types of tangible personal property can be stored. "Mini-storage" is taxable, regardless of whether the buyer or the seller provides particular security measures including but not limited to locks, fences, gates, security cameras, or password-protected entrances. "Mini-storage" is taxable regardless of whether the buyer has sole access to the unit. "Mini-storage" does not include storage lockers, storage units, or garages at apartment complexes for the primary convenience of the tenant if such lockers, units, or garages are part of the nonitemized price of an apartment rental. Mini-storage space is not a warehouse. Rule 701—214.21(423) contains provisions on warehousing of raw agricultural products.

This rule is intended to implement Iowa Code section 423.2(6) "ax."

701—211.15(423) Test laboratories.

211.15(1) *In general.* Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific, or commercial purpose are selling a service subject to sales tax. "Test laboratories" includes but is not limited to mobile testing laboratories and field testing by test laboratories.

211.15(2) *Exempt testing services.* Test laboratory services performed on humans and animals and environmental testing services are not taxable. "Environmental testing services" includes but is not

limited to the physical and chemical analysis of soil, water, wastewater, air, or solid waste performed in order to ascertain the presence of environmental contamination or degradation.

211.15(3) Nonprofit blood centers. Test laboratory services rendered, furnished, or performed for a nonprofit blood center registered by the federal Food and Drug Administration are exempt when the services are directly and primarily used in the processing of human blood.

This rule is intended to implement Iowa Code sections 423.2(6) “bc,” 423.3(102), and 423.3(26A).

701—211.16(423) Termite, bug, roach, and pest eradicators.

211.16(1) In general. Persons engaged in the business of eradicating, controlling, or preventing the infestation by termites, insects, roaches, and all other living pests, by spraying or other means, are selling a service subject to sales tax. This includes persons who eradicate, prevent, or control pest infestations in farmhouses, outbuildings, and other structures, such as grain bins, used in agricultural production.

211.16(2) Spraying of cropland exempt. This rule does not include those persons who are engaged in the business of spraying cropland used in agricultural production to eradicate or prevent the infestation by pests of the cropland. The service of spraying cropland is exempt.

This rule is intended to implement Iowa Code sections 423.2(6) “bd” and 423.3(5).

701—211.17(423) Turkish baths, massage, and reducing salons.

211.17(1) In general. Persons engaged in the business of operating Turkish baths, massage, and reducing salons are selling a service subject to sales tax. This includes persons engaged in the business of operating a health studio which, as a part of its operation, offers any services of Turkish baths, massage, or reducing facilities or programs. The sales price of those services is subject to sales tax.

211.17(2) Definitions. For purposes of this rule:

“*Massage*” means the kneading, rubbing, or manipulation of the body to condition the body. “*Massage*” does not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts or those provided by massage therapists licensed under Iowa Code chapter 152C.

“*Reducing salons*” means any type of establishment that offers facilities or a program of activities for the purpose of weight reduction.

“*Turkish baths*” means any type of facility where an individual is warmed by steam or dry heat.

This rule is intended to implement Iowa Code section 423.2(6) “bg.”

701—211.18(423) Wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables. Persons engaged in the business of wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables are selling a service subject to sales tax. A person who provides a service described in this rule incidental to the sale of such items without charging separately for the service does not need to collect or remit tax. 701—Chapter 206 contains additional information on bundled transactions.

This rule is intended to implement Iowa Code section 423.2(6) “bl.”

701—211.19(423) Wrecking service.

211.19(1) In general. Persons engaged in the business of wrecking are selling a service subject to sales tax.

211.19(2) Definition. For purposes of this rule:

“*Wrecking*” includes defacing or demolishing tangible personal or real property or any part thereof.

This rule is intended to implement Iowa Code section 423.2(6) “bm.”

701—211.20(423) Cable and pay television.

211.20(1) In general. Persons engaged in the business of distributing the signals of one or more television broadcasting stations or other television programming to subscribers and using any transmission path, including but not limited to cable, satellite, streaming video, video on-demand, or pay-per-view, for those signals are selling a service subject to sales tax. The sales price for the rental of

any device used to decode or receive television broadcasting signals from a communications satellite is also subject to sales tax.

211.20(2) Signals to exhibitors. Any person distributing or providing signals to exhibitors on screens in auditoriums or other buildings that show sporting or other events are selling a service subject to sales tax.

211.20(3) Applicability. This rule applies to the transmissions of single events and subscriptions and to television services that serve fewer than 50 subscribers or are serving only customers located in one or more multiple unit dwellings that are under common ownership, control, or management.

This rule is intended to implement Iowa Code section 423.2(6) “al.”

701—211.21(423) Camera repair.

211.21(1) In general. Persons engaged in the business of camera repair are selling a service subject to sales tax.

211.21(2) Definition. For purposes of this rule:

“Camera repair” includes the repair of any still photograph, motion picture, video, digital, or television camera. “Camera repair” includes the repair of any part of a camera considered to be a part of a camera that may be detached from the camera body but can only be used with a camera. Examples of such accessories include but are not limited to detachable lenses, flash units, and motor drives. “Camera repair” does not include the repair of cameras that are built into a cell phone or computer.

This rule is intended to implement Iowa Code section 423.2(6) “w.”

701—211.22(423) Gun repair.

211.22(1) In general. Persons engaged in the business of repairing guns are selling a service subject to sales tax.

211.22(2) Definition. For purposes of this rule:

“Gun repair” means the repair of any pistol, revolver or other hand gun, as well as the repair of any shoulder or hip-fired gun such as a rifle or shotgun.

This rule is intended to implement Iowa Code section 423.2(6) “w.”

701—211.23(423) Janitorial and building maintenance or cleaning.

211.23(1) In general. Persons engaged in the business of performing one or a number of janitorial services and building maintenance or cleaning are selling a service subject to sales tax.

211.23(2) Definitions. For purposes of this rule:

“Building maintenance or cleaning” includes but is not limited to the cleaning of exterior walls or windows of any building and any other act performed upon the exterior of a building with the intent to keep it in good condition or upkeep.

“Janitorial services” means the type of cleaning services performed by a janitor in the regular course of duty. These services may be performed individually under a separate contract or included within a general contract to perform a combination of such services. These services may include but are not limited to interior window washing, floor cleaning, vacuuming, waxing, cleaning of interior walls and woodwork, cleaning of restrooms and furnaces, and the movement of furniture or other personal property within a building.

211.23(3) Exempt services.

a. Janitorial services performed in a private residence, including apartment or multiple housing units, and paid for by the occupant of the residence are exempt from sales tax.

b. Repairs and any service performed upon the exterior of a building that is a private residence and paid for by an occupant of the building are excluded from the meaning of “building maintenance or cleaning.” However, these services may be taxable under a construction-related enumerated service, described in rule 701—219.13(423).

c. Janitorial services and building maintenance or cleaning performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a structure are exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “z.”

701—211.24(423) Lawn care, landscaping, and tree trimming and removal.**211.24(1) Lawn care.**

a. In general. Persons engaged in the business of lawn care are selling a service subject to sales tax. Lawn care is a taxable service regardless of the age of the person performing the service. Lawn care services performed on properties including but not limited to cemetery grounds, golf courses, parks, and residential or commercial properties containing one or more buildings or structures are subject to sales tax.

b. Definitions. For purposes of this rule:

“*Landscaping*” includes services related to the arrangement and modification of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment.

“*Lawn*” means an open space between woods or ground that is covered with grass and is generally kept mowed or required to be kept mowed.

“*Lawn care*” includes but is not limited to services related to mowing, trimming, watering, fertilizing, reseeding, resodding, and the killing of weeds, fungi, vermin, and insects that may threaten a lawn.

c. Not taxable. The mowing of grass within a ditch is not a taxable service.

211.24(2) Landscaping.

a. In general. Persons engaged in the business of landscaping are selling a service subject to sales tax.

b. Landscape architects. Services that require licensure as a “landscape architect” pursuant to Iowa Code section 544B.2 are not subject to sales tax under this rule if those services are performed by a licensed landscape architect, are separately stated, and are separately billed as a charge for landscape architecture.

c. Exempt. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of real property are not subject to sales tax. 701—Chapter 219 contains additional information on new construction, reconstruction, alteration, expansion, and the remodeling of real property.

d. Landscaping materials. The gross receipts from the sale of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials, when used for landscaping and sold to final consumers, shall be subject to sales tax. For the purpose of this rule, “final consumer” ordinarily means the owner of the land to which the landscaping materials are applied, or a general building contractor when the landscaping contractor contracts with the general building contractor. When a landscaping contractor uses materials to fulfill a contract, the landscape contractor is considered the retailer of the landscaping materials and shall be obligated to collect sales tax on the selling price from the final consumer.

When the retailer of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials installs these items as a part of a contract for landscaping or improving land for a lump sum, the entire gross receipts shall be subject to tax. Any retailer’s charges for “landscaping” shall be taxable. However, a retailer’s charges for nontaxable services are not taxable if contracted for separately, or, if no written contract exists, the charges are itemized separately on the invoice.

EXAMPLE: A sodding contractor agrees to furnish and install 20 yards of sod for the lump sum of \$20 per yard. The sodding contractor must charge the customer \$20 sales tax (5 percent x \$400).

EXAMPLE: XYZ Company enters into a contract for the landscaping of an existing office building. XYZ Company agrees to furnish shrubs at \$25 each, white rock for \$5 per bag and woodchips for \$4 per bag. XYZ Company also contracts to install all of the landscaping materials for a fee of \$25 per hour. XYZ Company’s hourly fee is taxable if paid for the service of “landscaping” or for some other taxable service, e.g., excavation. If the service is not taxable, the charge is excluded from tax because it was separately contracted for.

The gross receipts from the sale of uncut sod and unexcavated trees, shrubs, and rock shall not be subject to sales or use tax. This is considered a sale of intangible property and not the sale of tangible personal property.

This rule does not apply to the gross receipts from the sale of plants and trees which are eligible for purchase with food coupons under rule 701—220.2(422,423).

211.24(3) Tree trimming and removal.

a. In general. Persons engaged in the business of tree trimming, tree removal, and stump removal are selling a service subject to sales tax. This includes but is not limited to removal of any portion of a tree, including branches or a trunk.

b. Shrubs with woody stems or trunks. For purposes of this rule, tree trimming and tree removal include the trimming or removal of any shrub that has a woody main stem or trunk with branches.

c. Sale of cut wood. Persons engaged in the business of tree trimming and tree removal who cut wood from the trees that they trim or remove into sizes suitable for sale as firewood and sell the wood as firewood are engaged in the sale of tangible personal property. The tree trimming or removal is not a sale for resale. The sales price from the sale of this wood is subject to sales tax.

This rule is intended to implement Iowa Code sections 422.42, 422.45(12), 423.1, and 423.2(6) “*ab.*”

701—211.25(423) Pet grooming.

211.25(1) In general. Persons engaged in the business of pet grooming are selling a service subject to sales tax. This includes persons who are not veterinarians and groom dogs.

211.25(2) Definitions. For purposes of this rule:

“*Pet*” means any animal that has been tamed or gentled and is kept by its owner for pleasure or affection, rather than for utility or profit. Service animals or assistance animals as defined in Iowa Code section 216.8B and livestock are not considered pets.

“*Pet grooming*” includes any act performed to maintain or improve the appearance of a pet. This includes but is not limited to washing, combing, currying, hair cutting, and nail clipping, regardless of whether the person performing the act is a veterinarian.

211.25(3) Veterinary pet grooming. 701—Chapter 206 contains more information on bundled transactions to aid in determining the taxability of pet grooming when it is completed for both veterinary and cosmetic reasons.

211.25(4) Livestock showing. Services related to the pet grooming of livestock, including but not limited to the preparation of livestock for exhibition at fairs or shows, are exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “*am.*”

701—211.26(423) Reflexology.

211.26(1) In general. Persons engaged in the business of reflexology are selling a service subject to sales tax.

211.26(2) Definition. For purposes of this rule:

“*Reflexology*” means the same as defined in Iowa Code section 152C.1.

This rule is intended to implement Iowa Code section 423.2(6) “*ar.*”

701—211.27(423) Water conditioning and softening.

211.27(1) In general. Persons engaged in the business of water conditioning and softening are selling a service subject to sales tax.

211.27(2) Definitions. For purposes of this rule:

“*Water conditioning*” means any action other than water softening taken with respect to water that renders the water fit for its intended use, more healthful, or enjoyable for human consumption. “*Water conditioning*” includes but is not limited to water filtration, purification, deionization, and reverse osmosis.

“*Water softening*” means the removal of minerals from water to render it more suitable for drinking and washing.

211.27(3) Water purification. When performed for residential, commercial, industrial, or agricultural users, the service of water purification is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*bh.*”

701—211.28(423) Security and detective services.

211.28(1) *In general.* Persons engaged in the business of providing security or detective services are selling a service subject to sales tax.

211.28(2) *Definitions.* For purposes of this rule:

“Detective service” means a service of investigation with the purpose to obtain information regarding any of the following subjects: crimes or wrongs done or threatened; the habits, conduct, movements, location, associations, transactions, reputation, or character of a person; credibility of witnesses or other persons; inquiry or recovery of lost or stolen property; cause, origin, or responsibility of a fire, accident, or damage to property; or veracity or falsity of any statement or representation, or means a service of investigation with the purpose to detect deception or to secure evidence to be used before an authorized investigation committee, before boards of award or arbitration, or in a civil or criminal trial.

“Security service” means a service with the purpose to protect property from theft, vandalism, or destruction or individuals from physical attack or harassment. “Security service” includes but is not limited to the rental of guard dogs; burglar or fire alarms; providing security guards, bodyguards or mobile patrols; or the protection of computer systems against unauthorized access.

211.28(3) *Exempt.* The sales price of the following services or activities are not subject to sales tax under this rule:

a. Peace officer engaged privately in security or detective work with the knowledge and consent of the chief executive officer of the peace officer’s law enforcement agency.

b. Person employed full- or part-time by an employer in connection with the affairs of the employer.

c. Attorney licensed to practice law in Iowa while performing duties as an attorney.

d. Person engaged exclusively, either as an employee or independent contractor, in conducting investigations and adjustments for insurance companies.

e. Person serving notice or any other document to a party, witness, or any other individual in connection with any criminal, civil, or administrative litigation.

f. Solicitation of a debtor to pay or collect payment for a debt.

g. Consulting, rendering advice, or providing training with regard to security or detection matters.

h. Charges for mileage, travel expenses, lodging, meal expenses, fees paid for records, and amounts paid for information if those charges are separately identified, separately billed, and reasonable in amount.

This rule is intended to implement Iowa Code section 423.2(6) “*as.*”

701—211.29(423) Solid waste collection and disposal services.

211.29(1) *In general.* Persons engaged in the business of solid waste collection and disposal are selling a service subject to sales tax.

211.29(2) *Definitions.* For purposes of this rule:

“Nonresidential commercial operation” means any operation that is an industrial, commercial, agricultural, or mining operation, whether for profit or not. “Commercial” refers to those involved in the buying and selling of goods and services, rather than just meaning a for-profit operation.

1. “Nonresidential commercial operation” includes but is not limited to hotels, motels, restaurants, realtors, professional firms (doctors, lawyers, accountants, or dentists), repair persons, persons selling and renting all sorts of tangible personal property, persons selling insurance of any kind, appraisers, skilled trades (e.g., plumbers, carpenters, and electricians), construction contractors, banks, savings and loans, barbers and beauticians, day care centers, counseling services, employment agencies, janitorial services, landscapers, painters, pest control, photography, printing, and storage services. Also included within the meaning of nonresidential commercial operation are the United Way, the American Cancer Society, the Elks, Masons, houses of worship (e.g., churches, synagogues, and mosques), and not-for-profit hospitals that are not licensed under Iowa Code chapter 135B.

2. “Nonresidential commercial operation” does not include apartment complexes, mobile home parks, manufactured home communities, and single-family or multifamily dwellings. Also excluded from the meaning are nonprofit hospitals licensed pursuant to Iowa Code chapter 135B.

“*Recyclable material*” includes but is not limited to used motor oil, paper, glass, metals (e.g., copper, aluminum, and iron), and batteries, as long as the recycled materials are separated from the solid waste for the purpose of recycling the materials.

“*Recycling facilities*” means facilities where recyclable materials are separated or processed for the purpose of reusing a material in its original form or using it in a manufacturing process that will not cause the destruction of the recyclable material to preclude its further use. A facility that produces insulation from used glass would qualify as a recycling facility under this rule, while a facility that separates or processes recyclable materials for use as fuel would not qualify as a recycling facility under this rule.

“*Solid waste*” means the same as defined in Iowa Code section 423.2(7).

211.29(3) *Nonresidential commercial operations.* Counties, municipalities, and cities that provide the service of solid waste collection and disposal to nonresidential commercial operations are obligated to collect and remit the tax from these services. Additionally, any person who has contracted to provide solid waste collection and disposal service to a city or municipality is obligated to collect and remit the tax from those services provided to nonresidential commercial operations located within that city or municipality. If the solid waste collection and disposal service is rendered to multiple businesses or organizations, tax must be collected and remitted only on those portions that meet the definition of nonresidential commercial operations.

211.29(4) *Bundled transaction of solid waste collections and disposal services.* 701—Chapter 206 contains more information on bundled transactions regarding when both taxable and nontaxable solid waste collection and services are provided to a customer.

211.29(5) *Disposal or tipping charges.*

a. Taxable. Charges for disposal or tipping of solid waste are also subject to sales tax. Persons or businesses who transport their own solid waste and persons who transport, without compensation, solid waste generated by another must pay the required tax upon the disposal or tipping charge or fee imposed by the collection or disposal facility.

b. Exempt. Charges or fees imposed for the service of collecting and managing recyclable material separated by solid waste by a waste generator are not subject to sales tax.

211.29(6) *Recycling facilities.* The sales price of the service of solid waste collection and disposal provided to recycling facilities that separate or process recyclable materials is not subject to sales tax if, as a result of the separation or processing, the volume of the waste collected is reduced by 85 percent and the waste is collected and disposed of separately from other solid waste.

This rule is intended to implement Iowa Code section 423.2(7).

701—211.30(423) Sewage services.

211.30(1) *In general.* Persons engaged in providing sewage service to nonresidential commercial operations are selling a service subject to sales tax.

211.30(2) *Definitions.* For purposes of this rule:

“*Agricultural operation*” means any enterprise engaged in the raising of crops or livestock for market on an acreage.

“*Industrial operation*” means a business that purchases or rents machinery or equipment eligible for the Iowa sales and use tax exemption for industrial machinery and equipment.

“*Mining operation*” means a business engaged in underground mining, strip mining, or quarrying.

“*Nonresidential commercial operation*” means the same as defined in rule 701—211.44(423).

“*Sewage services*” means the services of collecting rainwater, liquid and solid refuse, or excreta for drainage or purification by means of pipes, channels, or conduits usually placed underground.

211.30(3) *Nonresidential commercial operations.* Counties, municipalities, sanitary districts, or any other person providing sewage service to nonresidential commercial operations are obligated to collect and remit the applicable Iowa sales tax. Any person or entity that has contracted to provide sewage services to a county or municipality is obligated to collect and remit the applicable Iowa sales

tax performed for the county or city on behalf of the nonresident commercial operations located within that county or city.

This rule is intended to implement Iowa Code section 423.2(6) “*at.*”

701—211.31(423) Sign construction and installation.

211.31(1) *In general.* Persons engaged in the business of constructing and installing signs are selling a service subject to sales tax.

211.31(2) *Definition.* For purposes of this rule:

“*Sign*” means notices erected and maintained for the purpose of providing information, notices, markers, and the advertising of products or services. Signs include but are not limited to billboards, indoor or outdoor sign devices, and any structure erected and maintained for the purpose of conveying information.

This rule is intended to implement Iowa Code section 423.2(6) “*aw.*”

701—211.32(423) Dating services.

211.32(1) *In general.* Persons engaged in providing dating services are selling a service subject to sales tax.

211.32(2) *Definition.* For purposes of this rule:

“*Dating service*” means the service of providing an opportunity for individuals to meet and interact socially with the possibility of forming a relationship. Dating services include but are not limited to the services of those who provide an opportunity for individuals to describe themselves to and meet potential partners through escort services, smartphone applications, online websites and applications, and videotapes. Excluded from the definition are marriage matchmakers, telephone numbers that only provide opportunities for conversation rather than in-person interaction, and advertisements in newspapers or magazines soliciting companionship.

This rule is intended to implement Iowa Code section 423.2(6) “*n.*”

701—211.33(423) Personal transportation service.

211.33(1) *Personal transportation service defined.* “Personal transportation service” means the arrangement or provision of transportation of a person or persons for consideration, regardless of whether the person or entity providing such service supplies or uses a vehicle in conjunction with the service. “Personal transportation service” includes but is not limited to the following:

a. Transportation services provided by a human driver, including but not limited to drivers with a Class C, Class D endorsement 3, or Class M license, or by a chauffeur as defined in Iowa Code section 321.1(8). Examples of such services include but are not limited to taxi services, driver services, limousine services, bus services, shuttle services, and rides for hire;

b. Transportation services provided by a nonhuman driver, autonomous vehicle, or driverless vehicle; and

c. Ride sharing services, including but not limited to use of a network to connect transportation network company riders to transportation network company drivers who provide prearranged rides as defined in Iowa Code section 321N.1(4).

EXAMPLE 1: Marketplace X is a transportation network company that operates a network to connect drivers to riders. Driver D provides rides in Iowa exclusively through X’s network. A person in Iowa requests a ride through X’s network, and D provides the ride in D’s car. X is a marketplace facilitator. X must collect Iowa sales tax and applicable local option sales tax on the sales price of the ride. Because D makes all of D’s Iowa sales through X, which collects all applicable taxes on all of D’s rides, D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. X will report the sales tax on X’s Iowa sales tax return.

EXAMPLE 2: D provides rides for X and Y, two different transportation network companies. X is a marketplace facilitator responsible for collecting and remitting Iowa sales tax and applicable local option sales tax on the sales price of the rides D provides through X’s network. Y is also a marketplace

facilitator responsible for collecting all applicable taxes on the rides D provides through Y's network. D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return.

EXAMPLE 3: D independently provides rides in addition to providing rides through X's network. X must collect all applicable taxes on the rides D provides through its network. X is not responsible for collecting tax on any of the rides D provides independent from X's network. D, a seller of personal transportation service with physical presence in Iowa, must collect and remit Iowa sales tax and applicable local option sales tax on the sales price of the rides D sells independent of X's network.

211.33(2) *Tax imposed; sourcing.* The sales price from the sale of personal transportation service in Iowa is subject to Iowa sales tax. The tax is imposed if the personal transportation service is first used in Iowa and is sourced to the location at which the service is first received.

EXAMPLE: R schedules a personal transportation service while at R's residence in Des Moines. R schedules the transportation service to transport R from Grinnell to Iowa City. R independently travels to Grinnell, where R enters a vehicle owned by the transportation service. The transportation service takes R from Grinnell to Iowa City, where the service ends and R pays for the service. The sale is sourced to Grinnell, the location at which R first received the transportation service. The transportation service must charge sales tax and the applicable local option tax in Grinnell, even though R scheduled the service while in Des Moines and the service concluded and payment was made in Iowa City.

211.33(3) *No tax imposed on interstate motor carrier transportation service.* Where a personal transportation service involves interstate travel by a motor carrier as defined in 49 U.S.C. Section 13102(14), no tax shall be imposed on the transaction to the extent prohibited by 49 U.S.C. Section 14505.

211.33(4) *Exemption for transportation services furnished by a qualified public transit system, medical transportation service, or paratransit service.* The sales price from sales of transportation services by public transit systems, medical transportation services, or paratransit services is exempt from tax. For purposes of the exemption under Iowa Code section 423.3(106), the following definitions shall apply:

"Medical transportation" means a personal transportation service for an individual to travel to a health care provider for the individual's medical care. Medical transportation is not limited to transportation services for immediate life-threatening or serious injuries.

"Paratransit service" means a personal transportation service provided to individuals with disabilities.

"Public transit system" means a public transit system as defined in Iowa Code section 324A.1(4).

This rule is intended to implement Iowa Code sections 423.2(6) "*ac*" and 423.3(106).

701—211.34(423) Information services.

211.34(1) *In general.* Persons engaged in the business of providing access to information services provided through any tangible or electronic medium are selling a service subject to sales tax.

211.34(2) *Definition.* For purposes of this rule:

"Information services" means the same as defined in Iowa Code section 423.1(22A).

211.34(3) *Taxable examples.* Examples of information services include but are not limited to database files, research databases, genealogical information, mailing lists, subscription files, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, price lists or guides, scouting reports, and other similar items of compiled information prepared for a particular customer.

211.34(4) *Nontaxable examples.* "Information services" does not include the furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material or information prepared for general dissemination to the public in the form of books, magazines, newsletters, videotapes or audiotapes, compact discs, or any other medium commonly used to communicate with large numbers of customers. The sale of a book, magazine, or similar item is not the sale of an information service, even if the item contains material of practical use (e.g., in conducting

a private, for-profit business) to its purchaser. These items sold in digital formats may be taxable as a specified digital product.

This rule is intended to implement Iowa Code section 423.2(6) “*br.*”

701—211.35(423) Software as a service.

211.35(1) *In general.* Persons engaged in the business of providing software as a service are selling a service subject to sales tax. The content or material accessed by way of software as a service does not impact the taxability of the software itself.

211.35(2) *Definitions.* For purposes of this rule:

“*Software as a service*” means the sale, storage, use, or other consumption of vendor-hosted computer software, such as but not limited to software accessible on the cloud. “Software as a service” does not include services commonly understood to constitute “infrastructure as a service” but may include what is described as “platform as a service” based on the facts and circumstances relating to that particular service. A relevant declaratory order, *In the Matter of study.com, LLC*, Iowa Dep’t of Revenue Declaratory Order No. 2020-310-2-0649 (Apr. 20, 2021), provides further discussion of software as a service.

“*Vendor-hosted computer software*” means computer software that is accessed through the Internet or a vendor-hosted server whether the access is permanent or temporary, whether any downloading occurs, or whether the software is hosted by the retailer of the software or by a third party.

211.35(3) *Exemptions.* Software as a service may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bu.*”

701—211.36(423) Video game services and tournaments.

211.36(1) *In general.* Persons engaged in the business of providing video game services and tournaments are selling a service subject to sales tax. Taxable services relating to video game tournaments include fees paid for participating in such tournaments and related services as well as observing a video game tournament. Participation in or observation of such tournaments is taxable regardless of whether or not a prize is provided to any participants.

211.36(2) *Definitions.* For purposes of this rule:

“*Video games*” means any virtual, digital, or electronic game in which a user interacts with a user interface to generate visual feedback on a video device such as a computer monitor, television screen, or mobile device. Video games may be transferred through any physical or electronic medium, including by cartridge, disc, or electronic file, or through access to any server or network of servers.

“*Video game services*” means providing access to video games, support and account services, in-game currency exchanges, payment processing services, and any other service related to the hosting or provision of video games.

“*Video game tournament*” means an event where participants compete in the playing of video games. Participants may be playing video games by being physically present in the same location or playing remotely.

This rule is intended to implement Iowa Code section 423.2(6) “*bt.*”

701—211.37(423) Services related to specified digital products or software sold as tangible personal property.

211.37(1) *In general.* Persons engaged in the business of providing services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products or software sold as tangible personal property are selling a service subject to sales tax.

211.37(2) *Definition.*

“*Specified digital products*” means the same as defined in Iowa Code section 423.1.

211.37(3) *Exemption.* Services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products or software sold as tangible

personal property may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bs.*”

701—211.38(423) Storage of tangible or electronic files, documents, or other records.

211.38(1) *In general.* Persons engaged in the business of providing storage of tangible or electronic files, documents, or other records are selling a service subject to sales tax.

211.38(2) *Exemption.* Storage of tangible or electronic files, documents, or other records may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bq.*”

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 212, 284, and 285
“Exempt and Taxable Sales; Sales Involving Government Entities and Nonprofits; and Types of Sales
Based on the Type and Method of Transaction”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1, 423.2, 423.3,
423.14, and 413.14A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to readopt Chapters 212 and 285 and rescind Chapter 284. Revenue proposes revisions to Chapters 212 and 285 to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. These chapters describe the Department’s interpretation of Iowa Code chapter 423 as it applies to certain types of exempt and taxable sales. Chapter 212 provides guidance on sales involving government entities and nonprofits. Chapter 285 provides guidance on certain types of sales based on the type and method of transaction. Some rules from rescinded Chapter 284 have been moved to Chapters 210, 212, and 219. Chapters 210 and 219 are not included in this Regulatory Analysis but are covered in separate analyses published herein (11/1/23 IAB).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rulemaking does not create costs for any classes of persons. Any cost is associated with the underlying statute imposing the tax.
 - Classes of persons that will benefit from the proposed rulemaking:
The public, including retailers and purchasers, will benefit from guidance on taxable and exempt sales.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact associated with the rules beyond what is contained in statute.

- Qualitative description of impact:

These rules reduce uncertainty about what sales are taxable and exempt. Failing to have these rules would lead to confusion, additional questions to the Department, and potential errors in calculating sales tax.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, these chapters provide guidance on sales that are considered taxable and exempt, making it more likely that the correct amount of tax will be remitted.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapters to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about when a taxable sale occurs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The Department considered the option of not having rules explaining how the method of transaction affects taxation or rules related to government entities and nonprofits but determined that the rules provide useful guidance to the public and to government entities and nonprofits.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the possibility of not providing the rules in these chapters but determined that it provides useful guidance to the public beyond what is provided by the statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The absence of these rules would lead to confusion about whether certain sales are taxable or exempt.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

These chapters do not have a substantial impact on small business. They do not make any special distinctions for small businesses. These rules do not impose any requirements on businesses other than the taxes imposed by the underlying statute.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 212 and adopt the following **new** chapter in lieu thereof:

CHAPTER 212
GOVERNMENTS AND NONPROFITS

701—212.1(423) Taxability of profits used by or donated to an educational, charitable, or religious entity. For purposes of the exemption provided in Iowa Code section 423.3(78), the following definitions apply:

212.1(1) Educational. An activity has an “educational purpose” if the activity has as its primary objective to give instruction. The term “educational purpose” includes recreational or cultural activities. Activities which are directly related to the educational process such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of this exemption. Municipal or public or nonprofit science centers and libraries are also considered educational for purposes of the exemption.

EXAMPLE 1: A local nonprofit preschool that is exempt from federal tax under Internal Revenue Code (IRC) Section 501(c)(3) has a chili supper to raise money for playground equipment, educational materials, and classroom furniture. The sales transactions from the supper are exempt from sales tax because the total amount of the profits from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as a private nonprofit educational institution. Rule 701—212.5(423) contains additional information regarding the sale of tangible personal property and performance of services to certain nonprofit corporations.

EXAMPLE 2: A local nonprofit ballet company, which is exempt from federal income tax under IRC Section 501(c)(3), promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All profits are utilized by the ballet company to pay for its operational expenses and to perform the activities previously mentioned. The sales from this gift shop are exempt from Iowa sales tax to the extent that the profits therefrom are utilized to pay for the stated educational activities.

212.1(2) Religious. “Religious purpose” includes all forms of belief in the existence of superior beings or things capable of exercising power over the human race. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

EXAMPLE 1: A local church, which is exempt from federal income tax under IRC Section 501(c)(3), has a bake sale. All of the bake sale profits are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for “on-premises consumption” (rule 701—220.5(423) contains more information on the sale of prepared food), but the bake sale profits are exempt from tax in any event because they are to be used for religious purposes. However, generally, any purchases made by the church that are not for resale are subject to sales tax. Iowa Code section 423.3(2) contains the exemption for the sales price of sales for resale.

EXAMPLE 2: Another local church, exempt from federal income tax under IRC Section 501(c)(3), conducts bingo games every Thursday. The profits from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the profits are going to be used.

212.1(3) Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

EXAMPLE 1: A local, nonprofit animal shelter that is exempt from federal income tax under IRC Section 501(c)(3) provides shelter, medical care, socialization, and adoption services for homeless animals and, as a fundraiser, sells T-shirts and sweatshirts depicting rescued animals. All of the profits from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the profits from the sales would be expended on a charitable purpose. Items purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: A nonprofit hospital, which has received exemption from federal income tax under IRC Section 501(c)(3), operates a gift shop. All of the profits are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the profits from the gift shop are used for a charitable purpose, the sales price would be exempt from sales tax.

a. Profits. The sales price from sales at issue in this exemption is exempt from sales tax to the extent that the profits are used by or donated to a qualifying organization and used for a qualifying activity. For purposes of this rule, “profits” means proceeds remaining after direct expenses have been deducted from the sales price derived from the activity or event. The expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity.

Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 423.3(78), it can still be held responsible for sales tax on gross receipts sales price if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

At the time of the selling event, a presumption is made that sales tax will not be charged to and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the profits from the sale are expended, which follows the selling event. If after the event a portion of the profits is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the sales price in the tax period in which that portion was expended.

EXAMPLE 1: The cost of food for a fundraising meal would be a direct expense. However, the cost of a victory celebration because the fundraising dinner was a success would not be a direct expense.

EXAMPLE 2: An educational institution hosts an art show. It invests profits from the art show into income-producing property and uses the remainder of the profits to purchase books for the library.

EXAMPLE 3: A nonprofit organization hosts a concert to raise money for neighborhood improvements. The cost of entertainment, if the entertainment is the principal source of proceeds for the activity or event, is a direct expense of the concert.

Unless a specific exemption applies to the entity, purchases by qualifying organizations which are not for resale cannot be purchased free of sales tax.

b. General information. The following is general information that is important to organizations involved in educational, religious, or charitable activities:

(1) There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

(2) Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep for three years financial records which meet acceptable accounting procedures.

(3) Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

(4) Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code which requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue. However, if such organizations are making sales that are subject to tax, then a sales tax permit must be obtained.

(5) The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious, or charitable activity.

(6) When profits from an activity are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the profits are not considered to be expended for educational purposes, and the gross receipts sales price from the car show are subject to tax.

(7) Activities to raise funds to send members of qualifying educational, religious, or charitable organizations to conventions and other similar events which are directly related to the purposes of the qualifying educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 423.3.

(8) An organization whose function is to promote by advertising the use of a particular product which can be purchased at retail does not qualify for the exemption provided by Iowa Code section 423.3(78), even though promotion by advertising may educate the public.

(9) Sales of tangible personal property or specified digital products by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt to the extent the profits are expended for educational, religious, or charitable purposes.

(10) All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended, except that those games operated by a county or a city are exempt from collecting the sales tax. When organizations operate such games, they are required to have a sales tax permit and a gambling license.

This rule is intended to implement Iowa Code section 423.3(78).

701—212.2(423) Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. Receipts from the sale of tangible personal property or specified digital products or from rendering, furnishing, or providing taxable services to the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. shall be exempt from sales tax.

Purchases made by the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, or U.S.O. outside of Iowa for use in Iowa shall be exempt from use tax.

This rule is intended to implement Iowa Code section 423.3(107).

701—212.3(423) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property or services are exempt as described in Iowa Code section 423.3(43), sales tax does not apply.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. Company A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to Company B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

212.3(1) Proof of transportation. The most acceptable proof of transportation outside the state is:

- a. A waybill or bill of lading made out to the retailer's order calling for transport; or
- b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or
- c. A trip sheet signed by the retailer's transport agency which shows the signature and address of the person outside the state who received the transported goods.

212.3(2) Certificate of out-of-state delivery. Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

212.3(3) Exemption not applicable. Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code section 423.3(43).

701—212.4(423) Educational institution. Tangible personal property, specified digital products, or enumerated services purchased by any private nonprofit educational institution, as defined in Iowa Code section 423.3(17), in the state and used for educational purposes is exempt from sales tax. When purchases are made by any private nonprofit educational institution and the institution is acting as an agent for the sale to any student or other person, the sales are taxable if the proceeds from the sale are not used for educational purposes.

212.4(1) Taxable sales. Examples of taxable sales include:

- a. Sales of prepared food or other taxable food (rules 701—220.3(423) to 701—220.6(423) contain more information), whether sold at snack bars, grills, cafeterias, restaurants, or cafes and whether or not sold to students.
- b. Sales from vending machines.
- c. Special event billings to colleges for meals for guests not connected with the college or at events not connected with the college.
- d. Sales to fraternities or sororities for events not billed to the college.
- e. Special event meals by commercial or social clubs, such as chambers of commerce, Rotarians, Kiwanis, alumni, advertising clubs, or political groups, whether or not billed through the college.

212.4(2) Exempt sales. Examples of exempt sales include:

- a. The sales of yearbooks to schools which have executed contracts with yearbook companies to purchase yearbooks. These are considered sales for resale and are exempt from tax.
- b. The sales of yearbooks from the school to the students and others. These are considered an educational activity and are exempt to the extent the profits therefrom are expended for educational purposes.
- c. Student board billing to include freshman days and student orientation when billed to the college and included in tuition.
- d. Students and faculty casual board when billed to the college.
- e. Events, when given by faculty for students and billed to the college.
- f. Events sponsored by colleges for visiting dignitaries, or functions related to education and billed to the college.
- g. Meals for students on education field trips and billed to the college.

EXAMPLE 1: A child care center (ABC) is a private nonprofit organization that provides the service of caring for children newborn to six years of age. In addition, ABC teaches children basic learning skills such as shapes, numbers, colors, and the alphabet. ABC's primary purpose is to provide child care. The education of the children is a secondary activity. Consequently, ABC is not a private educational institution and would not qualify for exemption from sales tax under Iowa Code section 423.3(17).

EXAMPLE 2: A Preschool (XYZ) is a nonprofit private organization that teaches children from the ages of three to six years old. XYZ Preschool teaches the children basic learning skills such as shapes, numbers, colors and the alphabet by using certified faculty and accredited curriculum. XYZ Preschool is a private nonprofit educational institution and is eligible to claim the exemption to the extent purchases otherwise meet the requirements of Iowa Code section 423.3(17).

This rule is intended to implement Iowa Code section 423.3(17).

701—212.5(423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax.

212.5(1) Unless a specific exemption applies, the sales price of tangible personal property, taxable services, and specified digital products sold to nonprofit corporations is subject to tax. Sales price from the sale or rental of tangible personal property, specified digital products, or from services performed, rendered or furnished to certain nonprofit corporations are exempt from tax. Such organizations can be found in Iowa Code section 423.3(18).

212.5(2) The exemption does not apply to tax paid on the purchase of building materials by a contractor which are used in the construction, remodeling or reconditioning of a facility used or to be used for one or more of the uses set forth in this rule.

This rule is intended to implement Iowa Code section 423.3(18).

701—212.6(423) Nonprofit private museums. Iowa Code section 423.3(21) provides a sales tax exemption for certain purchases by nonprofit private museums.

212.6(1) Definitions and examples. A “museum” is all of the following:

- a. An institution organized for educational, scientific, historical preservation, or aesthetic purposes.
- b. Predominantly devoted to the care and exhibition of a collection of objects in a room, building, or locale.
- c. The collection must be open to the public periodically or at fixed intervals.
- d. Have staff available to answer questions regarding the collection.

212.6(2) Exclusions from definition of “museum.”

- a. An institution is not a “museum” unless it can be included in the ordinary and usual public concept of a museum.
- b. Examples of institutions that are not designated as “museums” include aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos.

701—212.7(423) State fair and fair societies. The sales price from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district or fair society organized under Iowa Code chapter 174 are exempt from sales tax. This exemption does not apply to individuals, entities, or others that sell or provide services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174.

This rule is intended to implement Iowa Code sections 423.3(23) and 423.3(35).

701—212.8(423) Sales to hospices. Iowa Code section 423.3(28) provides an exemption for freestanding nonprofit hospice facilities. “Hospice” and “hospice care” are defined in 42 CFR 418.3. A “freestanding hospice facility” is any hospice program housed in a building which is dedicated only to the hospice program and which is not attached to any other building or complex of buildings. An individual is “terminally ill” if that individual has a medical prognosis that the individual’s life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 423.3(28).

701—212.9(423) Art centers.

212.9(1) Iowa Code section 423.3(22) provides an exemption from tax for certain purchases made by private nonprofit art centers.

212.9(2) To qualify for the exemption, the organization will be all of the following:

- a. An art center, which is defined as a structure that displays aesthetic objects which are the product of the conscious use of skill and creative imagination.
- b. Housed in a structure open to the public periodically or at fixed intervals with regular hours and with staff available to answer visitors’ questions.
- c. Located in Iowa.

This rule is intended to implement Iowa Code section 423.3(22).

701—212.10(423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the federal governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of Iowa Code section 423.5(1) “c” shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code section 423.3.

701—212.11(423) Sales by the state of Iowa, its agencies and instrumentalities. The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the sales price from taxable retail sales of tangible personal property, specified digital products, and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa which are specifically exempted from collecting tax by Iowa Code section 423.3(32).

This rule is intended to implement Iowa Code chapter 423.

701—212.12(423) Sales to federal, state, municipal, and tribal governments and instrumentalities.

212.12(1) Exempt sales. Sales are exempt from tax under Iowa Code section 423.3(31) if the tangible personal property, taxable services, and specified digital products are:

- a. Sold directly to an exempt government entity described in Iowa Code section 423.3(31);
- b. Used for a public purpose; and
- c. Not one of the types of the products listed in Iowa Code section 423.3(31) “a”(1) through 423.3(31) “a”(3) that remain taxable even when sold to certain government entities.

212.12(2) Direct, legal incidence of the tax.

a. *Sale to exempt government entities.* A sale to an exempt government entity occurs only if the government entity, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. Rule 701—219.23(423) contains additional information on construction contracts with designated exempt entities.

b. *Government contractors.* Iowa Code section 423.3(31) does not apply to independent contractors who contract with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services which a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor.

c. *Examples.*

EXAMPLE 1: Patient A purchases a hospital bed. A percentage of patient A’s bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale. Patient A is the direct purchaser of the bed. The exemption in Iowa Code section 423.3(31) does not apply.

EXAMPLE 2: A is a federal government employee. A travels in Iowa while on government business and purchases prepared meals from restaurants in Iowa. A pays for the meals. The federal government later reimburses A the entire cost of the meals, including the sales tax A paid on the prepared meals. A has purchased meals, and Iowa sales tax should be charged accordingly. The federal government is not the direct purchaser of the prepared meals so the exemption under Iowa Code section 423.3(31) does not apply and neither A nor the federal government qualify for a tax refund.

212.12(3) Government instrumentalities.

a. *Express statute.* An entity can be an instrumentality of government under Iowa Code section 423.3(31) if a state or federal statute expressly designates the entity as a government instrumentality that is exempt from paying sales tax on its direct purchases.

EXAMPLE 1: Iowa Code section 231.32(5) provides that after the commission on aging designates an area agency on aging, the area agency “shall be considered an instrumentality of the state and shall adhere to all state and federal mandates applicable to an instrumentality of the state.” Thus, a designated area agency on aging is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

EXAMPLE 2: Iowa Code section 12E.3(1) provides the tobacco settlement authority is “a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential government functions.” Thus, the tobacco settlement authority is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

b. *Lack of express statute defining an entity as a government instrumentality.* If there is no statute that expressly defines an entity as a government instrumentality exempt from tax, the entity may qualify as a government instrumentality if it satisfies all of the following requirements:

- (1) Government controls the detailed physical performance of the entity;

- (2) The entity's day-to-day operations are supervised by government; and
- (3) The entity is created for the purpose of, and is primarily engaged in, the performance of essential government functions.

212.12(4) *Certain corporations organized under federal statutes.* The sale of tangible personal property, specified digital products, or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

- a. Federal savings and loan associations.
- b. Federal savings and trust companies.
- c. National banks.
- d. Other organizations of like character.

701—212.13(423) Fees paid to cities and counties for the privilege of participating in any athletic sport. A “sport” is any activity or experience which involves some movement of the human body and gives enjoyment or recreation. An “athletic” sport is any sport which requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports: baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

212.13(1) The following is a list of various fees which would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

a. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

b. Fees paid to enter any tournament or league which involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

212.13(2) Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

a. Fees paid for lesson or instruction in how to play or to improve one's ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

b. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

c. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport which can be played within the facility.

d. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

EXAMPLE: A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee which the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

e. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code section 423.3(32).

701—212.14(423) Property used by a lending organization. The sales price from the sale of tangible personal property or specified digital products to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services or specified digital products. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) which the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 423.3(19).

701—212.15(423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit system's charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

ITEM 2. Rescind and reserve **701—Chapter 284.**

ITEM 3. Rescind 701—Chapter 285 and adopt the following new chapter in lieu thereof:

CHAPTER 285
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD
OF TRANSACTION OR USAGE

701—285.1(423) Auctioneers as agents.

285.1(1) An auctioneer in making a sale, whether of tangible personal property, specified digital products, or realty, is by virtue of this employment making the sale as the agent of the principal.

285.1(2) Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 423.3(39), the sales price from the sale is exempt from sales tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3(39).

701—285.2(423) Florists.

285.2(1) Florists are engaged in the business of selling tangible personal property and specified digital products at retail. The sales price from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property and specified digital products are subject to sales tax.

285.2(2) When florists conduct transactions through a florists' telephonic delivery association, the following rules shall apply when computing tax liability:

a. On all orders taken by an Iowa florist and telephoned to a second florist in Iowa for delivery in the state, the sending florist shall be liable for tax, based on sales price from the total amount collected from the customer, except the cost of a telegram if separately stated on a bill or invoice.

b. In cases where an Iowa florist receives an order pursuant to which the Iowa florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, Iowa sales tax is not due.

c. In cases where Iowa florists receive telephonic instructions from other florists located either within or outside of Iowa for the delivery of flowers, the receiving florist will not be held liable for Iowa sales tax with respect to the transaction.

This rule is intended to implement Iowa Code section 423.2.

701—285.3(422,423) Student fraternities and sororities.

285.3(1) Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail when they provide their members with meals and lodging for which a flat rate or lump sum is charged. A person engaged in the selling of foods and beverages to such organizations for use in the preparation of meals is making exempt sales at retail and shall not be liable for tax if the food purchases would be exempt under rule 701—220.5(423).

285.3(2) Student fraternities or sororities engaged in the business of selling meals or other tangible personal property to persons other than members for which separate charges are made are making taxable sales.

285.3(3) Sales by other food preparers. When student fraternities or sororities do not provide their own meals but meals instead are provided to members by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of sales tax on the sales price from meals furnished.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—285.4(423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling tangible personal property, specified digital products, and funeral services. Examples of the tangible personal property sold by a funeral director include but are not limited to caskets, other burial containers, flowers, and burial clothing. “Funeral services” includes but is not limited to cremation, transportation by hearse and embalming. Tax is due only on the sales price from the sale of tangible personal property, specified digital products, and taxable services, and not on the sales price from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, specified digital products, taxable services and nontaxable services, tax is due only upon the sales price from the sales of tangible personal property and taxable services.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, burial clothing, and other items sold to customers for resale, and may purchase these items from suppliers without payment of sales tax.

For purposes of this rule, the terms of morticians or funeral directors shall also include cemeteries, cemetery associations and anyone engaged in activities similar to those discussed in the rule.

This rule is intended to implement Iowa Code section 423.2.

701—285.5(423) Physicians, dentists, surgeons, ophthalmologists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, optometrists, and opticians are not liable for sales tax on services rendered, including but not limited to examinations, consultations, diagnosis, and surgery.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual’s own use. For example, the purchase of prescription drugs would not be subject to sales tax if purchased for use in the practice of the physician, dentist, surgeon, ophthalmologist, optometrist, or optician. Sales of tangible personal property and specified digital products to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from sales tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property and specified digital products to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property and specified digital products to ophthalmologists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of equipment that is utilized directly in the

care of an illness, injury or disease, which would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—285.6(423) Warranties and maintenance contracts.

285.6(1) Mandatory warranties. A warranty is a mandatory warranty when the buyer, as a condition of the sale, is required to purchase the warranty from the seller. When the sale of tangible personal property, specified digital products, or services includes the furnishing or replacement of parts or materials which are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty which is in connection with an enumerated taxable service is also exempt from tax.

285.6(2) Optional warranties. A warranty is an optional warranty when the buyer is not required to purchase the warranty from the seller.

a. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 423.2 is considered a sale of tangible personal property the sales price of which is subject to tax at the time of sale except as described below.

b. The sale of a residential service contract regulated under Iowa Code chapter 523C is not the sale of tangible personal property, and the sales price from the sales of these service contracts is not subject to tax, and the sales price from taxable services performed for the providers of residential service contracts are now subject to tax. “Residential service contract” is defined in Iowa Code section 523C.1(8).

c. If an optional service or warranty contract is a computer software maintenance or support service contract and the contract provides for the furnishing of technical support services only, then no tax is imposed on the furnishing of those services. If a computer software maintenance or support service contract provides for the performance of nontaxable services and the taxable transfer of tangible personal property, and no separate fee is stated for either the performance of the service or the transfer of the property, then sales tax shall be imposed on the sales price from the sale of the contract.

285.6(3) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code section 423.2.

701—285.7(423) Casual sales.

285.7(1) *Casual sales by persons not retailers or by retailers outside the regular course of business.*

a. Exemptions. Casual sales are exempt from Iowa sales and use taxes except for the casual sale of vehicles subject to registration, aircraft, and other vehicles listed in Iowa Code section 423.3(39) “*b.*” In order for a casual sale to qualify for exemption under this subrule, two conditions must be present:

(1) The sale of tangible personal property, specified digital products, or taxable services must be of a nonrecurring nature, and

(2) The seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 423.2 or, if so engaged, the sale must be outside the regular course of the seller’s business.

b. Nonrecurring events. Two separate selling events outside the regular course of business within a 12-month period shall be considered nonrecurring. Three such separate selling events within a 12-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year.

c. Sales of capital assets. Sales of capital assets such as equipment, machinery, and furnishings which are not sold as inventory shall be deemed outside the regular course of business (including sales of capital assets during a retailer's liquidation) and the casual sales exemption shall apply as long as such sales are nonrecurring. This will include transactions exempted from state and federal income tax under Section 351 of the Internal Revenue Code.

EXAMPLE: Corporation A sells the company copy machine at retail to B. At the time of this sale, Corporation A is engaged in the business for profit of selling clothes at retail. Assuming that the sale of the copy machine constitutes a sale of a nonrecurring nature, there is a casual sale because the sale is outside the regular course of Corporation A's business.

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible personal property, specified digital products, or services for a profit, since the sales are recurring, there is no casual sale.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in the performance of any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. See rule 701—285.1(423).

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring.

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets which it has no use for or desires to replace. This event has been a planned function of I and is conducted regularly and consistently over a span of years. Even though this sale event occurs only once a year, it is of a recurring nature because of the pattern of repetitiveness present and, therefore, the casual sale exemption would not apply, regardless of the number of items sold at the sale event each year.

EXAMPLE: J, a corporation engaged in the sale for resale of tangible personal property, sells three capital assets used in J's trade or business consisting of a copy machine, a desk, and a computer. Each sale is made to different buyers and is unrelated to the other sales. The three sales occur in January, June, and October of the same year. The sale made in October consists of a desk. J has not established a pattern of recurring sales of capital assets prior to aforementioned sales of capital assets. Under these circumstances, the sale of the desk is not a casual sale, but the sales of the copy machine and the computer are casual and exempt.

EXAMPLE: K, a corporation, is primarily engaged in the business of road construction. From time to time, it sells used capital assets and scrap materials reclaimed from its road construction work to individuals and businesses. It does not advertise itself as a retailer of these assets and materials but sells them as a matter of courtesy to persons who cannot purchase them elsewhere. After 42 years of operation, it decides to liquidate. Pursuant to that decision, K employs two auctioneers to sell its capital assets and ceases operation after its assets are sold. K had only one capital asset sale during the 12 months immediately preceding each liquidation auction sale. The auction sales are exempt casual sales under this subrule (1) because they are nonrecurring, and (2) because K is not a retailer of the capital assets sold during its liquidation.

EXAMPLE: L, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of L are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply, but only because of the exemption set out in subrule 285.7(2) *infra*, since the transfer involves a liquidation of L's business and the sale of L's inventory to another person (the corporation) which will continue to engage in a similar trade or business.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

285.7(2) *Special rules for casual sales involving the liquidation of a trade or business.* When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt those sales only when the following circumstances exist: (1) the trade or business must be transferred to another person, and (2) the transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit. One effect of this is that a retailer who is closing as opposed to transferring a business and is selling inventory in the process of this closing is not entitled to claim the casual sale exemption under this subrule, but see subrule 285.7(1), and the resale exemption is always potentially applicable to sales of inventory. The examples below contain further explanation.

EXAMPLE: L, a hardware store, desires to liquidate the business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which a sales tax permit was required to be held. L, however, does not transfer the trade or business to anyone else. Under these circumstances, the casual sales exemption does not apply to the sale of the inventory, but see subrule 285.7(1) for criteria which determine whether the casual sales exemption applies to the equipment and fixtures.

EXAMPLE: The facts are the same as those in the previous example, except that L is liquidating its business because it attempted to build a new store and its entire inventory was destroyed by fire while in storage. An auctioneer sells L's equipment and trade fixtures to various purchasers. The auctioneer's sale of the equipment and trade fixtures is an exempt casual sale of the type described in subrule 285.7(2) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business.

EXAMPLE: M, a sole proprietorship, incorporated. The assets of M are sold to the new corporation for stock. The new corporation engaged in a similar business. The casual sale exemption would apply.

EXAMPLE: N, an oil company, sells all or substantially all of the tangible personal property of ten company-owned service stations which were held or used in the course of its business, for which N was required to hold a sales tax permit, by bulk sales or otherwise. The sales were made to O, P, and Q and occurred at different times during the same year, each sale being unrelated. N was required to have a sales tax permit for each service station. N transferred its trade or business (each service station) to O, P, and Q, each of whom will engage in the same business N did, i.e., operation of service stations. Even though under these circumstances, the sales by N are recurring, the casual sales exemption would apply since each trade or business was transferred to another person who did engage in a similar trade or business.

EXAMPLE: R, an operator of a restaurant, auctions off to various purchasers who are not engaged in the restaurant business all or substantially all of the tangible personal property held or used in the business for which R was required to hold a retail sales tax permit. R transfers the trade or business to S who then operates a restaurant at the same location R did. Even if S did not purchase any of the tangible personal property, under these circumstances, the casual sales exemption applies. The tangible personal property held or used in the trade or business need not be sold to the same person to whom the trade or business is sold for the exemption to apply.

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. This subrule's casual sales exemption will not apply, but see subrule 285.7(1) for the criteria of a casual sale exemption which could apply.

The above examples are not the only ones pertaining to the question of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

285.7(3) *Casual sales of services.* The “casual sale” of an enumerated service has occurred if the following circumstances exist:

a. The service was rendered, furnished, or performed on a nonrecurring basis by a seller who, at the time of the sale of the service, is not engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 423.2 or, if so engaged, the sale was outside the regular course of the seller’s business; or

b. The sales of all, or substantially all of the services held or used by a retailer in the course of the retailer’s trade or business for which the retailer is required to hold a sales tax permit, if the retailer sells or otherwise transfers the trade or business to another person who engages in a similar trade or business.

EXAMPLE: V ordinarily engages in janitorial and building maintenance or cleaning which are taxable services. Once, as a favor to customer W, V cut customer W’s lawn and otherwise performed the taxable service of “lawn care” for customer W. Since this performance of lawn care was not “within V’s regular course of business” and was not “recurring,” the sales price from the lawn care is not subject to tax.

EXAMPLE: Corporation X rents a piece of equipment from Y. Y does not otherwise rent equipment and does not engage in the business for profit of selling tangible personal property, specified digital products, or taxable enumerated services. A casual sale qualifying for the exemption exists.

This rule is intended to implement Iowa Code section 423.3(39).

701—285.8(423) Taxation of Native Americans.

285.8(1) *Definitions.*

“*Native Americans*” means all persons who are descendants of and who are members of any recognized tribe.

“*Settlement*” means all lands recognized as a tribal government settlement or reservation within the boundaries of the state of Iowa.

285.8(2) *Retail sales tax—tangible personal property.* Retail sales of tangible personal property made on a recognized settlement to Native Americans who are members of the tribe located on that settlement, where delivery occurs on the settlement, are exempt from tax. Retail sales of tangible personal property made on a recognized settlement to Native Americans where delivery occurs off the settlement are subject to tax. Retail sales of tangible personal property made to non-Native Americans on a recognized settlement are subject to tax regardless of where the delivery occurs. Sales made to non-Native Americans are taxable even though the seller may be a member of a recognized settlement.

285.8(3) *Retail sales tax—services.* Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Native Americans who are members of the tribe located on the recognized settlement where delivery of the service occurs are exempt from tax. Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Native Americans where delivery of the services occurs off a recognized settlement are subject to tax.

285.8(4) *Off-settlement purchases.* Purchases made by Native Americans off a recognized settlement are subject to tax if delivery occurs off the settlement. Purchases made by Native Americans off a recognized settlement are not subject to tax if delivery is made on the settlement to Native Americans who are members of the tribe located on that settlement.

This rule is intended to implement Iowa Code section 423.3.

701—285.9(423) Computer software.

285.9(1) *In general.*

a. Applicability of tax. For the purposes of this rule, the sales price of the tangible personal property, specified digital products, and services found within Iowa Code section 423.2 is subject to tax.

b. Definitions.

“*Program*” is interchangeable with the term “software” for purposes of this rule.

“*Rental or lease*” means the same as defined in Iowa Code section 423.1(24).

285.9(2) Taxable sales, rentals or leases, and services.

a. Sales of equipment. Tax applies to sales of automatic data processing equipment and related equipment.

b. Rental or leasing of equipment. Where a lease includes a contract for the use of equipment, the rental or lease payments are subject to tax.

c. Training materials. Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

d. Services a part of the sale or lease of equipment. Where services, such as programming, or training are provided to those who purchase or lease software on a mandatory basis as an inseparable part of the sale or taxable lease of the equipment, charges for the furnishing of the services are includable in the measure of tax from the sale or lease of the equipment whether or not the charges are separately stated. (Where the purchaser or lessee has the option to acquire the equipment either with the services or without the services, charges for the services may not be excluded from the measure of tax if they are taxable enumerated services.)

e. Mailing services. Addressing (including labels) for mailing. Where a service provider addresses, through the use of its software or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service provider for the customer, tax does not apply to the charge for addressing. Similarly, where the service provider prepares, through the use of its software or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the service provider for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service provider itself affixes the labels to the material to be mailed. However, tax would be due on any tangible personal property, such as labels, consumed by the service provider. Mailing lists which are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

This rule is intended to implement Iowa Code section 423.3.

701—285.10(423) Envelopes for advertising. Some envelopes which contain advertising are exempt from tax. Envelopes which are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt.

EXAMPLE 1: XYZ mails coupons and advertisements to persons giving discounts on a certain item which is sold at retail. The envelope used to package these materials is exempt from tax since it is primarily used to contain advertising materials.

EXAMPLE 2: XYZ mails a monthly billing statement to its charge account customers. In addition to the billing statement, XYZ encloses an advertisement in the envelope. The envelope has a dual purpose: (1) the collection of accounts receivable and (2) the distribution of advertising. However, the envelope is not primarily used for advertising but for billing the customer, therefore, the exemption does not apply.

This rule is intended to implement Iowa Code section 423.3(42).

701—285.11(423) Newspapers, free newspapers and shoppers’ guides.

285.11(1) Sales price of newspapers. The sales price from the sales of newspapers, free newspapers, and shoppers’ guides are exempt from tax. The sales price from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable.

285.11(2) General characteristics of a newspaper. “Newspaper” is a term with a common definition. A “newspaper” is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material.

285.11(3) Characteristics of newspaper publishing companies. Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or “wire services.” A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle

editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

285.11(4) *Characteristics which distinguish a newsletter from a newspaper.* A “newsletter” is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than the paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 423.3(55).

701—285.12(423) Maintenance or repair of fabric or clothing.

285.12(1) Sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See rule 701—200.1(423) for definitions of the terms “chemical,” “solvent,” “sorbent” or “reagent.” This subrule’s exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is “directly used” in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances which do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethylene “perch” or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the “perch” or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with “perch” or petroleum solvents is exempt. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry’s purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry’s purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and “sizing” by dry cleaners is not exempt from tax.

285.12(2) The sale of property which is a container, label, or similar article or receptacle for transfer in association with the maintenance or repair of fabric or clothing is exempt from tax. In general, the sale of any article which protects dry-cleaned or laundered clothing from dirt or helps the dry-cleaned or laundered clothing to maintain its proper shape or form in the same fashion as a container does would be exempt from tax under this subrule. By way of nonexclusive example, the sale of plastic garment bags, which protect clothing from dirt, is exempt from tax. The sale of “shirt boards” and garment hangers, both of which help clothing to maintain its proper shape, would also be exempt.

A container, label, or similar article’s sale is exempt from tax only if the item is transferred to the customer of a commercial laundry, dry cleaner, or other retailer. Thus, “bundle bags” and “Meese carts,” used to transfer or transport clothing within a dry-cleaning establishment, are not subject to the exemption because these bags and carts remain with the dry cleaner and are not transferred to a customer.

Concerning labels, the sale of which would be exempt from tax, these labels must be affixed to the dry-cleaned or laundered clothing and transferred to the customer of the dry-cleaning or laundering establishment. By way of nonexclusive example, the sale to dry cleaners, of “special attention,” “invoice” and “sorry” tags would be exempt from tax.

The sale of safety pins and other types of clips used to hang skirts and other garments from hangers would not be exempt from tax. These items do not sufficiently resemble containers or labels to the extent that their sale is exempt from tax.

This rule is intended to implement Iowa Code sections 423.3(45) and 423.3(51).

701—285.13(423) Drop shipment sales. A “drop shipment” generally involves two transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. A drop shipment sale occurs when the consumer places an order for the purchase of tangible personal property with the out-of-state retailer. The retailer does not own the property ordered at the same time the consumer’s order is placed. The retailer then purchases the property from the supplier. The supplier ships the property directly to the consumer in Iowa. The supplier in a drop shipment sale is not required to collect sales or use tax from the consumer, even if the requisite nexus to require collection exists.

If delivery of goods under a contract for sale occurs outside of Iowa, sale of the goods occurs outside of Iowa. If delivery of the goods under the contract for sale occurs within Iowa, the sale occurs in Iowa. If the sale occurs in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa sales tax, the retailer is obligated to collect Iowa sales tax upon the sales price from its sale of the goods to the consumer. If the sale occurs in Iowa but the retailer does not have nexus sufficient to require it to collect Iowa sales or use tax, or if the retailer fails to collect sales tax, the consumer is obligated to pay use tax directly to the department.

EXAMPLE A: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minneapolis retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has nexus with Iowa, and delivery under the contract for sale has occurred in this state. In this case, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE B: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minnesota retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has no nexus with Iowa. Delivery under the contract of sale is in Iowa. Under these circumstances, the consumer is obligated to pay use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE C: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with this state; delivery under the contract for sale is in Minnesota. Under the circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa use tax. The supplier is not obligated to collect or pay any Iowa tax.

This rule is intended to implement Iowa Code sections 423.1, 423.14, and 413.14A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 213
“Miscellaneous Taxable Sales”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1, 423.2, 423.3, and 423.5

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 213 and adopt new Chapter 213. The Department proposes amendments to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of miscellaneous types of sales. These proposed rules reduce uncertainty about what is subject to tax and what is exempt.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification about what is subject to tax and what is exempt.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact from the proposed rules.
 - Qualitative description of impact:

These proposed rules reduce uncertainty about what is taxable and what is exempt. Failing to adopt them would lead to confusion, questions to the Department, and potential errors in calculation.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the agency of implementing the proposed rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are no costs relating to the proposed rules. The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about what is taxable and what is exempt.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on what is taxable and what is exempt.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not seriously consider any alternative methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without the proposed rules would lead to confusion about what is taxable and what is exempt.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 213 and adopt the following **new** chapter in lieu thereof:

CHAPTER 213
MISCELLANEOUS TAXABLE SALES

701—213.1(423) Conditional sales contracts.

213.1(1) Definition. A “conditional sale” is a sale in which the vendee receives the right to the use of the goods that are the subject matter of the sale, but the transfer of title to the vendee is dependent on the performance of some condition by the vendee, usually the full payment of the purchase price.

213.1(2) Factors used to determine a conditional sale. Conditional sales are evidenced by the facts supporting the nature of the vendor’s business, the intent of the parties, and the facts supporting the control over the tangible personal property by the vendee.

A conditional sales contract would exist where:

a. The vendee/lessee has total control over the property and is responsible for all losses or damages;

b. The transfer of the property is complete except for title, which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor’s “lease” agreements, except in cases of default; and

c. The vendor has no intent of retaining control over the property except for purposes of selling it or financing it for sale.

In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

213.1(3) Taxability of conditional sales. When a conditional sale exists, the seller bills the purchaser for the full amount of tax due, and sales tax is due on the full contract price upon delivery of the property that is the subject of the contract. No further tax is due on the periodic payments. Interest and finance charges are not considered part of the sales price if they are separately stated and reasonable in amount and are, therefore, not subject to tax.

This rule is intended to implement Iowa Code sections 423.1(50) and 423.2(1).

701—213.2(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes are taxable.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, sales or use tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, sales or use tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes an application for a refund of the motor vehicle fuel tax.

The sales price from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. The sales price of gas converter equipment that might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.3(423) Antiques, curios, old coins, collector’s postage stamps, and currency exchanged for greater than face value. Curios, antiques, art work, coins, collector’s postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail, and their sales price are subject to tax.

213.3(1) The sales price of stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors is subject to tax.

213.3(2) Stamps that are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government are not taxable. A stamp becomes an article of

tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, its sales price is not subject to either sales or use tax.

213.3(3) The sales price from any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency is subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the sales price or purchase price subject to tax. Currency or coins become articles of tangible personal property having a value greater than face value when the currency or coins are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sales price of the sale is subject to tax for the face value alone.

EXAMPLE 1: Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties, without regard to the face value of the coins.

EXAMPLE 2: Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax.

This rule is intended to implement Iowa Code sections 423.1(47), 423.2(1) and 423.5.

701—213.4(423) Consignment sales. When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of tax on the sales price from the sale of other merchandise.

The sales price of sales of tangible personal property by an agent or consignee for another person is exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.5(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions. The sales price of electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions is subject to tax when sold to users or consumers. The listed articles do not become an integral or component part of merchandise intended to be sold ultimately at retail.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(51).

701—213.6(423) Sales on layaway. The sales price from a layaway sale is subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option to purchase, the item is placed aside “on layaway” and is not available for sale to the general public. This option to purchase is exercised by the customer’s making one or more “layaway payments.” The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

A sale on layaway should not be confused with a “conditional sale.” The differences are these: (1) In a conditional sale, physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; and (2) in a conditional sale, physical possession of and title to the property pass to the buyer at different times. In a conditional sale situation, physical

possession passes first; then after all periodic payments are made, title (ownership) passes to the buyer. In a layaway sale, both possession and title pass at the same time after all payments are made.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.7(423) Memorial stones. The sales price of memorial stones is subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total sales price from the sale is taxable. Any separately itemized charge for engraving is part of the taxable sales price of a memorial stone.

The sales price of any designs, lettering or engraving performed on a memorial stone or monument is also subject to tax.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.8(423) Creditors and trustees. Pursuant to the provisions of any piece of chattel paper or any other document evidencing a creditor's interest in tangible personal property, the sales price from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to the sales price of inventory and noninventory goods, provided the owner is in the business of making retail sales of tangible personal property or taxable services.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.9(423) Sale of pets. Sales of pets are tangible personal property subject to tax. A retailer selling pets shall procure a permit and report tax on the sales price from the sale of such pets.

This rule is intended to implement Iowa Code sections 423.1(54) and 423.2(1).

701—213.10(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of actual purchase of the meal ticket, coupon book, or merchandise card. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.11(423) Repossessed goods.

213.11(1) Sale subject to tax. When tangible personal property that has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

213.11(2) Bad debts. A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price that ultimately constitutes a bad debt.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.12(423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials that have been selected by customers, all expenses and profits from the sale of such fabricated articles shall be included in the sales price. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.13(423) Used or secondhand tangible personal property. The sales price on the sale of used or secondhand tangible personal property is subject to tax in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.14(423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property, and the sales price of these sales is subject to sales or use tax unless the carpeting and other floor coverings are purchased for resale or are otherwise exempt from tax.

The sales price of floor coverings other than carpeting that are shaped to fit a particular room or area and that are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials that are used or consumed in the performance of a construction contract. See rule 701—219.2(423) and 701—subrule 219.3(3) for tax treatment.

The sale of carpeting is not to be treated as the sale of a “building material.” The sales price of rugs, mats, linoleum, and other types of floor coverings that are not attached but that are simply laid on finished floors and are not considered building materials is subject to tax unless the floor coverings are purchased for resale or are otherwise exempt from tax.

The sale of “carpeting” to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. “Carpeting” is any floor covering made of fabric, usually of wool or synthetic fibers. For purposes of this rule, “carpeting” also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. Sellers of carpeting should charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

The sales price of carpeting, with installation, is taxable in the following manner:

1. If separate contracts exist for the sale of the carpeting and for the installation, only the sales price of the carpeting is subject to tax.
2. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.
3. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 225.4(1) for more information.

In the following examples, assume that contractor A purchases carpeting from supplier B for installation in customer C’s home. Whether or not A will purchase the carpeting from B for A’s own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A (the contractor) and C (the customer).

EXAMPLE A: A contracts with C to install carpeting in C’s home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the sales price of the transaction between A and B; tax is due upon A’s resale of the carpet to C, but not upon A’s charges for carpet installation, a nontaxable service.

EXAMPLE B: A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the sales price from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C: A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separately from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B.

This rule is intended to implement Iowa Code section 423.2(1) “b.”

701—213.15(423) Goods damaged in transit. If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the

consumer, the retailer and purchaser shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed.

If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

This rule is intended to implement Iowa Code section 423.2.

701—213.16(423) Sales of engraved, bound, printed, and vulcanized materials.

213.16(1) Engraving. Engraving includes the business of engraving on wood, metal, stone, or any other material. The engraved material is tangible personal property, the sales price of which is subject to tax.

213.16(2) Binding. Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of tangible personal property, the sales price of which is subject to tax.

213.16(3) Printing. Printing includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of printed tangible personal property that are subject to tax: printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

213.16(4) Vulcanizing. “Vulcanizing” means the act or process of treating crude rubber, synthetic rubber, or other rubberlike material with a chemical and subjecting it to heat in order to increase its strength and elasticity. The item produced after vulcanizing is tangible personal property, the sales price of which is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(1)“a.”

701—213.17(423) Premiums and gifts. A person who gives away or donates tangible personal property, specified digital products, or taxable services is deemed to be a consumer of such property, products, or services for tax purposes. The sales price from the sale of tangible personal property, specified digital products, or taxable services to such persons for such purposes is subject to tax.

When a retailer purchases tangible personal property, a specified digital product, or a taxable service, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property, product, or service at the retailer’s cost price.

When a retailer sells tangible personal property, specified digital products, or taxable services and furnishes a premium with the property, product, or service sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.18(423) Webinars.

213.18(1) In general. Webinars are generally taxable as specified digital products. Specifically, webinars fall into the “other digital products” category as a news or information product. Purchasing access to a live or pre-recorded webinar, even if the webinar’s purpose is educational or otherwise, is not treated as purchase of a service.

213.18(2) Nontaxable live webinars with virtual participation. Purchases of access to a live webinar, meaning access to viewing a presentation occurring in real time, are not always subject to sales tax. Attending a presentation in person, if it is not an admission to an amusement, is generally not taxable under Iowa law. Similarly, purchasing access to a live webinar is not taxable if the live webinar allows for a level of participation that is substantially similar to an in-person presentation.

213.18(3) Exemptions. Since purchases of webinars are taxable as specified digital products, any sales tax exemptions that apply to specified digital products may also apply to webinars.

EXAMPLE 1: A person purchases access to a live webinar to view on the person’s computer or mobile device. The in-person presentation, which can be viewed by people with access to the live webinar, allows for in-person attendees to ask questions throughout the presentation. Persons viewing

the presentation through the live webinar on their computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar are not substantially similar. The purchase of access to view this live webinar is subject to sales tax.

EXAMPLE 2: A person purchases access to a live webinar to view on the person's computer or mobile device. The in-person presentation, which is viewable by people with access to the live webinar, does not allow in-person attendees to ask questions throughout the presentation. The person viewing the presentation through the live webinar on the person's computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar is substantially similar. The purchase of access to view this live webinar is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.1(55B).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 216
“Events, Amusements, and Other Related Activities”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68 and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 99F.10, 423.2(1),
423.2(3)“m,” “v,” and “j,” and 423.3(63)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to rescind Chapter 216 and adopt new Chapter 216. The Department proposes amendments to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The Department also proposes additional rules to be included in this chapter that were previously found in other chapters because the Department has determined that the subject matter of those rules more closely aligns with the subject matter of this chapter. The purpose of the chapter is to provide guidance on the Department’s interpretation of the underlying statute to help the public understand exemptions relating to events and amusements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification about exemptions relating to events and amusements.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact of the proposed rules.

- Qualitative description of impact:

The rules reduce uncertainty about exemptions relating to events and amusements. Failing to adopt them would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are no costs associated with the proposed rules. The benefit of the rules is reducing confusion about exemptions relating to events and amusements.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on exemptions relating to events and amusements.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the option of not implementing the rules, but determined that the rules provide helpful guidance and useful clarification to the public on exemptions relating to events and amusements.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department determined that proceeding without these rules would lead to confusion about exemptions relating to events and amusements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 216 and adopt the following **new** chapter in lieu thereof:

CHAPTER 216
EVENTS, AMUSEMENTS, AND OTHER RELATED ACTIVITIES

701—216.1(423) Athletic events. The sales price from the sale of tickets or admissions to athletic events occurring in the state of Iowa and sponsored by educational institutions, without regard to the use of the proceeds from such sales, is subject to tax, except when the events are sponsored by elementary and secondary educational institutions.

This rule is intended to implement Iowa Code section 423.2(3).

701—216.2(423) Dance schools and dance studios.

216.2(1) *In general.* The sales price from the services sold by dance schools or dance studios are subject to sales tax. This includes all activities, such as acrobatics, exercise, baton-twirling, tumbling, or modeling taught in dance schools or dance studios.

216.2(2) *Definitions.* For purposes of this rule:

“*Dance school*” means any institution established primarily for the purpose of teaching one or more types of dancing.

“*Dance studio*” means any room or groups of rooms in which any one or more types of dancing are taught.

This rule is intended to implement Iowa Code section 423.2(6) “*m.*”

701—216.3(423) Golf and country clubs and all commercial recreation. All fees, dues or charges paid to golf and country clubs are subject to tax. “Country clubs” include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the sales price of which are subject to tax. “Recreation” includes all activities pursued for pleasure, including sports, games and activities that promote physical fitness, but does not include admissions otherwise taxed under Iowa Code section 423.2.

216.3(1) Dance schools are the only schools the services of which are taxable under Iowa Code section 423.2(6). Rule 701—216.2(423) contains information on dance schools and dance studios. The sales price from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

216.3(2) If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

a. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink’s facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink’s facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

b. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be “instruction” are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a “class”

with a fixed time and place for meeting. The instruction need not be received in what would ordinarily be thought of as a “classroom,” but the instructor and the persons receiving instruction should be segregated from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE 1: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE 2: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come, first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

c. The “instruction” must impart to the learner a level of knowledge or skill in the recreational activity that would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person’s instruction are to be exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “v.”

701—216.4(423) Campgrounds.

216.4(1) *In general.* Persons engaged in the business of renting campground sites are selling a service subject to sales tax, regardless of the duration of the rental. This includes the sales price for the operation of a campground and the use of a campground site.

216.4(2) *Definition.* For purposes of this rule:

“*Campground*” is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer, or motorhome. “*Campground*” does not include any hunting, fishing, or other type of camp where accommodations are provided, though such camps are likely subject to sales tax as commercial recreation under rule 701—216.3(423).

216.4(3) *Related charges.* The sale price of charges, whether mandatory or optional, imposed on persons using a campground site that are subject to sales tax include but are not limited to entry fees, utility (electric, water, sewer) fees, fees for the use of swimming pools or showers, and fees for extra persons or vehicles.

216.4(4) *Public parks.*

a. The sales price for the use of a state park as a campground is subject to sales tax; however, the sales price for the use of a county or municipal park as a campground is not subject to sales tax.

b. The sales price of vehicle entry fees into any state, county, or municipal park, commonly called “park user fees,” is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “j.”

701—216.5(423) Rental of personal property in connection with the operation of amusements. The sales price from rental of tangible personal property in connection with the operation of amusements is taxable. Such rentals include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately.

This rule is intended to implement Iowa Code section 423.2(1).

701—216.6(423) Exempt sales by excursion boat licensees.

216.6(1) The sales price of the following sales by licensees authorized to operate excursion gambling boats is exempt from Iowa sales and use tax:

- a. Charges for admission to excursion gambling boats, and
- b. The sales price from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

216.6(2) The sales price from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and the sales price from nongambling video games and other types of games that do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10.

701—216.7(423) Tangible personal property, specified digital products, or services given away as prizes.

216.7(1) *In general.* The sales price from the sale of tangible personal property, specified digital products, or services that will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B is exempt from tax. The rules issued by the Department of Inspections, Appeals, and Licensing in 481—Chapters 100 through 106 further describe the games of skill, games of chance, raffles, and bingo games that are lawful and may be lawfully awarded.

216.7(2) *Gift certificates.* A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code section 423.3(63).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 218
“Sales and Services Related to Vehicles”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1(6), 423.2(6),
423.2(7), 423.3(56), and 423.4(10)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt a new Chapter 218. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. This chapter also contains rules that previously existed in other chapters that the Department determined fit better with the subject matter contained in this chapter. This chapter describes the Department’s interpretation of the underlying statutes to help the public understand the taxability of sales and services relating to vehicles.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any classes of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification about the taxability of sales and services relating to vehicles.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact as a result of the proposed rules.
 - Qualitative description of impact:

These rules reduce uncertainty about the taxability of sales and services relating to vehicles. Failing to adopt them would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about the taxation of sales and services relating to vehicles.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about the taxation of sales and services relating to vehicles.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not seriously consider any alternative methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without these rules would lead to confusion about the taxability of sales and services relating to vehicles.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 218 and adopt the following **new** chapter in lieu thereof:

CHAPTER 218
SALES AND SERVICES RELATED TO VEHICLES

701—218.1(423) Armored car. Persons engaged in the business of either providing armored car service to others or converting a vehicle into an armored car are selling a service subject to sales tax. For purposes of this rule, “armored car” means a wheeled vehicle affording defensive protection by use of a metal covering or other elements of ordinance.

This rule is intended to implement Iowa Code section 423.2(6) “b.”

701—218.2(423) Vehicle repair.

218.2(1) *In general.* Persons engaged in the business of repairing vehicles are selling a service subject to sales tax. Rule 701—225.4(423) contains more information on purchases made by auto body shops.

218.2(2) *Definitions.* For purposes of this rule:

“*Repair*” includes any type of restoration, renovation or replacement of any motor, engine, working parts, accessories, body, or interior of a vehicle. “*Repair*” does not include the installation of new parts or accessories, which are not replacements, added to a vehicle.

“*Vehicle*” means the same as defined in Iowa Code section 321.1(90).

218.2(3) *Disposal fees.* Fees charged with the disposal of any item in connection with the performance of this service are subject to sales tax if the disposal fee of the item is not separately contracted for or itemized in the billing of the repair service. If the disposal fee is itemized or separately contracted for, the disposal fee is not subject to sales tax. Items that may be subject to disposal fee include but are not limited to air filters, batteries, oil, or tires.

This rule is intended to implement Iowa Code section 423.2(6) “c.”

701—218.3(423) Motorcycle, scooter, and bicycle repair.

218.3(1) *In general.* Persons engaged in the business of repairing motorcycles, scooters, and bicycles are selling a service subject to sales tax.

218.3(2) *Definitions.* For purposes of this rule:

“*Bicycle*” includes human-powered bicycles and electric bicycles.

“*Motorcycle*” includes autocycles.

“*Repair*” means the same as defined in rule 701—211.1(423).

This rule is intended to implement Iowa Code section 423.2(6) “ag.”

701—218.4(423) Battery, tire, and allied.

218.4(1) *Batteries in general.* Persons engaged in the business of installing, repairing, maintaining, restoring, or recharging batteries and any services related to or connected therewith are selling a service subject to sales tax.

218.4(2) *Tires in general.* Persons engaged in the business of installing, repairing, or maintaining tires and any services related to or connected therewith are selling a service subject to sales tax.

218.4(3) *Disposal fees.* Disposal fees charged in connection with the performance of the services identified in this rule are subject to sales tax if the disposal fee is not itemized or separately contracted for in the billing for the charge of the service. If the disposal fee charged in connection with the performance of the services identified in this rule are itemized or separately contracted for, then the disposal fee is not subject to sales tax. Items that may be subject to disposal fee include but are not limited to air filters, oil, tires, and batteries.

This rule is intended to implement Iowa Code sections 423.2(6) “d” and 423.2(7) “a”(1).

701—218.5(423) Boat repair.

218.5(1) *In general.* Persons engaged in the business of repairing watercraft are selling a service subject to sales tax.

218.5(2) *Definitions.* For purposes of this rule:

“*Repair*” means the same as defined in rule 701—211.1(423).

“*Watercraft*” means the same as defined in Iowa Code section 462A.2.

This rule is intended to implement Iowa Code section 423.2(6) “*h.*”

701—218.6(423) Vehicle wash and wax.

218.6(1) *In general.* Persons engaged in the business of vehicle washing and waxing are selling a service subject to sales tax, whether performed by hand, machine, or coin-operated device. Rule 701—225.7(423) contains more information on purchases of inputs in vehicle wash and wax services.

218.6(2) *Definition.* For purposes of this rule:

“*Vehicle*” means the same as defined in Iowa Code section 321.1(90).

This rule is intended to implement Iowa Code section 423.2(6) “*i.*”

701—218.7(423) Wrecker and towing.

218.7(1) *In general.* Persons engaged in the business of towing any vehicle are selling a service subject to sales tax. Included in this are services charges for a person to travel to any place to lift, extricate, tow, or salvage a vehicle.

218.7(2) *Definitions.* For purposes of this rule:

“*Towing*” includes any means of pushing, pulling, carrying, or freeing any vehicle from mud, snow, or any other impediment, including any incidental hoisting. “*Towing*” does not include transporting operable vehicles from one location to another when no operative aspect of the vehicle is integral to the transporting.

“*Vehicle*” means the same as defined in Iowa Code section 321.1(90).

This rule is intended to implement Iowa Code sections 423.1(7) and 423.2(6) “*bn.*”

701—218.8(423) Flying service.

218.8(1) *In general.* Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an airplane, or any other related service are selling a service subject to sales tax.

218.8(2) *Not included.* Flying services do not include those relating to agricultural aerial application, those relating to aerial commercial and chartered transportation services, and those services exempted by rule 701—211.2(423).

218.8(3) *Flight instruction charges.* Charges relating to flight instruction can be taxable or nontaxable. Taxable charges include but are not limited to the sales price for the following:

- a. Instructors’ services, ground instruction, and ground school.
- b. Students learning to fly with an instructor and dual flying.
- c. Rental of a plane. Rule 701—218.9(423) contains more information.

This rule is intended to implement Iowa Code section 423.2(6) “*s.*”

701—218.9(423) Aircraft rental.

218.9(1) *In general.* Persons engaged in the business of renting aircraft for 60 days or less are selling a service subject to sales tax.

218.9(2) *Definition.* For purposes of this rule:

“*Aircraft*” means the same as defined in Iowa Code section 328.1. “*Aircraft*” also includes any drone aircraft or any aircraft transporting only the pilot.

This rule is intended to implement Iowa Code section 423.2(6) “*bf.*”

701—218.10(423) Snowmobiles, motorboats, and certain other vehicles. The sales price of snowmobiles, all-terrain vehicles, dirt bikes, race karts or go-carts, and motorboats is taxable when purchased and not classified as vehicles subject to registration.

This rule is intended to implement Iowa Code chapter 423.

701—218.11(423) Motor fuel, special fuel, electric fuel, aviation fuels and gasoline.

218.11(1) *In general.* The sales price from the sale of motor fuel, including ethanol, special fuel, and electric fuel is exempt from sales tax if (1) the fuel is consumed for highway use, in watercraft, or in aircraft, (2) the Iowa fuel tax has been imposed and paid, and (3) no refund or credit of fuel tax has been made or will be allowed. The sales price from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa is exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat.

218.11(2) *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax-paid and used for purposes other than to propel a motor vehicle or used in watercraft.

218.11(3) *Refunds of tax on fuel purchased in Iowa and consumed outside of Iowa.* Even though fuel is purchased in Iowa, fuel tax is paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of the fuel tax does not subject the purchase of the fuel to sales tax.

218.11(4) *Tax base.* The basis for computing the Iowa sales tax will be the retail sales price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the sales price in determining the proper sales tax due. Rule 701—288.12(423) contains more information.

This rule is intended to implement Iowa Code section 423.3(56).

701—218.12(423) Ships, barges, and other waterborne vessels. Tax will not be imposed upon the use, within Iowa, of any ship, barge, or other waterborne vessel if that use is primarily for the transportation of property or cargo for hire on the rivers bordering this state. This exemption is also applicable to tangible personal property used as material in the construction of or as a part for the repair of any such ship, barge, or waterborne vessel. The use must be on a river or rivers bordering Iowa, not on any river or rivers bounded on both banks by Iowa territory.

This rule is intended to implement Iowa Code section 423.4(10).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 219
“Sales and Use Tax on Construction Activities”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, 423.42

State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2, 423.2(1)“b” and “c,” 423.2(6), 423.3, 423.3(31), 423.3(37), 423.3(45), 423.3(64), 423.3(80), 423.3(85), 423.4(1), 423.5, 423.5(1)“b,” 423.5(2), 423.6(9), and 423.6(10)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#
More phone numbers:
[tel.meet/pmv-smfj-zwf?pin=4428711103686](tel:meet/pmv-smfj-zwf?pin=4428711103686)

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and readopt Chapter 219, which describes the Department’s interpretation of the underlying statutes to aid the public in understanding the application of sales and use tax statutes that are primarily applicable to taxpayers engaged in construction activity. The Department proposes revisions to the rules to provide clarification and to remove language that is obsolete, unnecessary, and duplicative of statute. Included within the revisions is an addition to rule 701—219.7(423) from rule 701—281.3(423). The Department determined that Chapter 281 was no longer necessary and should be rescinded since many of the rules in that chapter were unnecessary, obsolete, or duplicative of statutory language. The Department determined that it would retain and repromulgate rule 701—281.3(423) on mobile homes and manufactured housing and add that to rule 701—219.7(423) with revisions since the subject matters of these rules are similar and would allow the public an easier means to find the information. The Regulatory Analysis on Chapter 281 is also published herein (IAB 11/1/23). The Department also renumbered some rules due to other edits and for organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not impose costs beyond what is imposed by the underlying statutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public, especially those engaged or associated with construction activities, will benefit from the proposed rulemaking since it provides guidance about the applicability of the imposition of sales or use tax or the exemption from tax on various construction-related purchases.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The proposed rulemaking does not create costs for any class of persons beyond what is imposed by the underlying statutes.

- Qualitative description of impact:

The proposed rulemaking reduces uncertainty about the applicability and scope of exemptions related to construction purchases. Failure to adopt the proposed rulemaking would lead to confusion and the potential collection of tax on what is an exempt purchase.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department to implement the proposed rulemaking beyond what is otherwise required to administer the underlying statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the proposed rulemaking provides clarification about the taxability and exemption from tax of various construction-related sales, making it less likely tax will be collected on what is an exempt purchase.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to remove unnecessary or obsolete language or language that duplicates statute and failing to provide clarification to the public about these types of purchases. The benefits of the proposed rulemaking are to provide additional certainty and to reduce confusion about the taxability of construction-related purchases and when those purchases may be exempt from tax.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive, and its purpose is to aid and provide guidance to the public about the taxability of construction-related purchases. The Department considered the option of not implementing the proposed rulemaking; however, it determined the rules provide helpful assistance and useful guidance to the public on these types of purchases.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the option of not implementing rules on this topic; however, it determined that the proposed rulemaking provides guidance and clarification to the public about construction-related purchases beyond what is provided for in the underlying statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department determined that proceeding without the proposed rulemaking would lead to confusion about the taxability of construction-related purchases, leading to the possibility of the overcollection of tax.

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business since it does not make any distinction based on the size of a business and does not impose any requirements on business beyond what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 219 and adopt the following new chapter in lieu thereof:

CHAPTER 219
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

701—219.1(423) General information and definitions.

219.1(1) Definitions. For purposes of this chapter, terms mean the same as defined in Iowa Code section 423.1 and as defined here.

“Building equipment” means any vehicle, machine, tool, implement, or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding, or remodeling property of others which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work.

“Building materials” means materials used in construction work, and is not limited to materials used in a construction contract. The term may also include any type of materials used for reconstruction, alteration, expansion, or remodeling of the premises or anything essential to the completion of a building or other structure for the use intended. Building materials generally consist of items which are incorporated into real property, lose their identity as tangible personal property, and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract.

“Building supplies” means anything that is furnished for and used directly in the carrying on of the work of an owner, contractor, subcontractor, or builder and which is used or consumed in the course of completing the project. Such items do not have to enter into and become a physical part of the structure like building materials, but they do become as much a part of the structure as the labor which is performed on it.

“Construction contract” means an agreement between a contractor and a sponsor under the terms of which the contractor agrees to provide labor, materials, supplies, and equipment to build a structure for the sponsor.

“Fabricated cost” means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site.

“Prefabricated structure” means any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor.

“*Repair*” means the same as mend, restore, maintain, replace and service. A repair contemplates an existing structure or tangible personal property which has become imperfect and constitutes the restoration to a good and sound condition.

“*Structure*” means that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds.

219.1(2) Classification and obligations. The classification of people and business determines their obligations to pay or collect sales or use tax or claim an exemption on the sales price from sales of building materials, supplies, equipment, other tangible personal property, and labor.

a. Classification types. People and businesses can be classified as an owner, contractor, contractor-retailer, retailer, or repairperson.

b. Classification. A specific classification must be chosen and once chosen should not be changed unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be.

c. Assessment for new businesses. It can be difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair; however, any reasonable assessment of a new business’s status will be honored by the department.

d. Prohibited. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

e. Example. A business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive. If, after two years’ operation, half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status.

This rule is intended to implement Iowa Code chapter 423.

701—219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute.

219.2(1) Inapplicability of resale exemption. A contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes material and labor charges for construction contracts or contracts for reconstruction, alteration, expansion, or remodeling.

219.2(2) Bidding considerations. When bidding on a contract, a contractor (general, special or subcontractor) should anticipate that sales or use taxes will increase the cost of materials by the tax unless the sponsor is a designated exempt entity. The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

This rule is intended to implement Iowa Code section 423.2(1) “b.”

701—219.3(423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders, or owners. Suppliers or dealers that sell materials, and supplies, and equipment to contractors, subcontractors, builders, or owners are required to collect Iowa sales tax from those persons based upon the sales price from such sales. Reference 701—subrule 219.23(4), which deals with construction contracts with designated exempt entities, for an explanation of one of the few exceptions to this requirement. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies, and equipment without paying sales tax to the vendor, unless the building materials, supplies, or equipment are purchased for resale. Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter that the materials are delivered into the state.

219.3(1) *Examples of building materials and supplies.* The following is a nonexhaustive list of typical items that are building materials and supplies:

- Asphalt
- Bricks
- Builders' hardware
- Caulking material
- Cement
- Central air conditioning
- Cleaning compounds
- Conduit
- Doors
- Ducts
- Electric wiring, connections, and switching devices
- Fencing materials
- Flooring¹
- Glass
- Gravel
- Insulation
- Lath
- Lead
- Lighting fixtures
- Lime
- Linoleum¹
- Lubricants
- Lumber
- Macadam
- Millwork
- Modular and mobile homes
- Mortar
- Oil
- Paint
- Paper
- Piping, valves, and pipe fittings
- Plaster
- Plates and rods used to anchor masonry foundations
- Plumbing supplies
- Polyethylene covers
- Power poles, towers, and lines
- Putty
- Reinforcing mesh
- Rock salt
- Roofing
- Rope
- Sand
- Sheet metal
- Steel
- Stone
- Stucco
- Tile
- Wallboard
- Wall coping
- Water conditioners

Weather stripping
 Windows
 Window screens
 Wire netting and screen
 Wood preserver

219.3(2) *Examples of building equipment.* Building equipment includes, but is not limited to, such items as:

Compressors
 Drill presses
 Electric generators
 Forms
 Hand tools
 Lathes
 Replacement parts for equipment
 Scaffolds
 Tools
 Vehicles including grading, lifting and excavating vehicles

219.3(3) *Taxability of equipment.* Construction equipment purchased by a contractor which is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. Equipment which is rented for use on or in connection with an Iowa construction contract would normally be rented subject to tax. Rule 701—219.21(423) provides an explanation of the existing exemption in favor of rented machinery used by a contractor on a job site.

This rule is intended to implement Iowa Code sections 423.2(1)“b” and 423.5.

701—219.4(423) Contractors, subcontractors, or builders who are retailers. In some instances, contractors, subcontractors, and builders are in a dual business which includes reselling to the general public on a recurring over-the-counter basis the same type of building materials and supplies which are used by the contractors, subcontractors, and builders in their own construction work. A person operating in such a manner is referred to in this chapter as a contractor-retailer.

219.4(1) *Determination of contractor-retailer or contractor.* Any person who is engaged in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling and who also sells building materials or other items at retail is obligated to examine the person’s business and determine if it is that of a contractor or a contractor-retailer.

219.4(2) *Taxability of sales by contractor-retailers.* A sale by a contractor-retailer of building materials, supplies, or equipment to owners is a retail sale and subject to sales tax. Contractors, subcontractors, or builders that purchase building materials, supplies, or equipment to be used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling are also retail sales and subject to sales tax. Contractors, subcontractors, or builders who purchase building materials, supplies, or equipment to be used in the performance of a job, which does not rise to the level of a new construction, reconstruction, alteration, expansion, or remodeling, are acting as retailers and not as contractors and must charge and collect from their customers sales tax on the sales price charged for materials, supplies, or equipment used in completing the job and on the sales price charged for any taxable service labor used in completing the job or on the entire charge, if materials and labor are not separately invoiced.

219.4(3) *Withdrawals from inventory.* When a contractor-retailer withdraws from inventory building materials, supplies, or equipment to be used in a construction contract performed by the contractor-retailer or in a contract for reconstruction, alteration, expansion, or remodeling performed by the contractor-retailer, the contractor-retailer must pay use tax on the cost of the materials, supplies, or equipment withdrawn from inventory. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the sales price charged for materials used in the repair and on the sales price charged for any labor used in the repair which is a taxable service or on the entire charge if materials and labor are not separately invoiced.

219.4(4) Characteristics of contractor-retailer. The following is a list of the characteristics of the usual contractor-retailer:

a. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling of structures. In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

b. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

c. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule.

d. A contractor-retailer purchasing construction material which will not be placed in its inventory must purchase that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

e. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

f. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa.

g. The business records of a contractor-retailer must clearly reflect the use made of items purchased, and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

219.4(5) Examples. The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1: Company A operates a retail outlet that sells lumber and other building materials and supplies. Company A is also a contractor which builds residential and commercial structures. Company A would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items which are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold over the counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter sales price.

EXAMPLE 2: Company B is a mechanical contractor and has no retail outlets. Company B rarely sells any of its inventory to other persons or to other contractors. Company B would not be considered a contractor-retailer under this rule. However, Company B would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. However, on those rare occasions when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale; therefore, Company B should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3: Company C is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet, but they frequently make sales of building materials which are in their inventory to local residents. Company C would be a contractor-retailer and could purchase all inventory items for resale. Those items which are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the sales price of the items.

EXAMPLE 4: Company D is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Company D would not be considered a contractor-retailer under this rule. Rather, Company D would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Company D should have a sales tax permit. However, Company D can adjust its sales tax report by taking a credit for tax paid to its vendor on an item sold to a local resident.

EXAMPLE 5: Company E places modular homes on slabs or basement foundations; makes electrical, plumbing and other connections; and otherwise prepares the modular homes for sale as real estate. Company E also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Company E is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner.

EXAMPLE 6: Company F has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

This rule is intended to implement Iowa Code section 423.2(1)“b.”

701—219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

219.5(1) Use by manufacturer.

a. Outside of Iowa. The use of building materials, supplies, or equipment in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event.

b. Within Iowa. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer’s fabricated cost or cost of production.

219.5(2) Use by contractor-retailer outside of Iowa. A contractor-retailer’s withdrawal of materials from inventory for use in construction contracts or contracts for reconstruction, alteration, expansion, or remodeling outside this state is not a taxable event.

219.5(3) Use by contractor in and outside of Iowa. A contractor is a consumer by statute. A contractor’s purchase of materials for use in a construction contract or a contract for reconstruction, alteration, expansion, or remodeling is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

219.5(4) Purchase by manufacturer. A manufacturer’s purchase of tangible personal property consumed as building materials in the manufacturer’s or the manufacturer’s subcontractor’s performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. The purchase of tangible personal property consumed by a manufacturer as building materials in the manufacturer’s or the manufacturer’s subcontractor’s performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling outside Iowa is not subject to tax.

219.5(5) Purchases from and used outside of Iowa. Building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling outside this state is exempt from use tax.

This rule is intended to implement Iowa Code section 423.2(1)“c.”

701—219.6(423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If equipment, building materials, or supplies are used by a manufacturer in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling, a "sale" occurs only if the equipment, materials, or supplies are used in the performance of such contract in Iowa.

This rule is intended to implement Iowa Code section 423.2(1) "c."

701—219.7(423) Prefabricated structures.

219.7(1) Basic concepts. Prefabricated structures include modular homes, mobile homes, manufactured housing, sectionalized housing, precut housing packages, and panelized construction.

219.7(2) Taxability.

a. Sales or use tax on the full purchase price is due when prefabricated structures are sold to or used by owners, contractors, subcontractors, or builders, or delivered under a contract for sale or sold for use in Iowa.

b. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable on the purchase price charged to a consumer or user by the seller at the time of retail sale.

219.7(3) Exceptions. The following are exceptions to the general taxability rule described above, applicable to modular and mobile homes and manufactured housing.

a. Modular homes. Modular homes, as defined in Iowa Code section 435.1, cannot be attached or towed behind a motor vehicle, and which does not have permanently attached to its body or frame any wheels or axles. Only 60 percent of the sales price from the sale of a modular home is subject to Iowa tax. This 60 percent rule is applicable only to structures that meet the definition of "modular home" and not to other types of prefabricated structures which do not meet the definition of the term "modular home" such as sectionalized housing or panelized construction. Also, the 60 percent rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. Mobile homes and manufactured housing.

(1) Use tax. Mobile homes and manufactured housing, as defined in Iowa Code section 321.1, are subject to use tax at the rate of 20 percent of the purchase price. All mobile homes sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park. See Iowa Code section 423.26A on the collection of use tax and certificates of title for manufactured housing.

(2) Exemption. To be eligible for the use tax exemption provided in Iowa Code section 423.6(9), the purchaser of a mobile home or manufactured housing must provide sufficient documentation to the county treasurer which verifies the Iowa use tax under Iowa Code section 423.5 has been previously imposed and paid.

(3) Trade-in allowance. A trade-in allowance will result in a reduction in the price of mobile homes and manufactured housing subject to tax if all the conditions found in Iowa Code section 423.3(59) are met.

1. The property traded for the mobile home or manufactured housing is a type of property normally sold in the regular course of business of the retailer selling the home or housing, and

2. The retailer intends ultimately to sell the traded property at retail or to use the traded property in the manufacture of a like item.

EXAMPLE 1: A manufactured housing dealer receives from the factory a new manufactured home that has a sales price of \$20,000. The dealer sells it and takes the purchaser's old manufactured home worth \$5,000 in trade. The dealer keeps the traded-in manufactured home as an office. The Iowa use tax is computed as follows:

| | |
|--|----------|
| Sales price | \$20,000 |
| Trade-in value | \$5,000 |
| Buyer's price (Sales price minus trade-in) | \$15,000 |
| Amount subject to tax (Full sales price multiplied by 20%) | \$4,000 |
| Use tax due (5%) | \$200 |

Because the manufactured home will not be ultimately sold at retail or used to manufacture a like item, the trade-in value does not result in a reduction of the price subject to tax.

EXAMPLE 2: Same facts as Example 1; however, instead of keeping the traded-in manufactured housing, the dealer intends to and lists the trade-in for sale.

| | |
|--|----------|
| Sales price | \$20,000 |
| Trade-in value | \$5,000 |
| Buyer's price (Sales price minus trade-in) | \$15,000 |
| Amount subject to tax (Full sales price multiplied by 20%) | \$3,000 |
| Use tax due (5%) | \$150 |

In this example, the trade-in value does result in a reduction of the price subject to tax because the dealer intends to sell the traded-in manufactured housing at retail.

219.7(4) *Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.*

a. A retailer (dealer) that is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor that is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor's sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of subrule 219.4(5).

c. A dealer that is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 701—219.4(423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the sales price from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 219.7(5) in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than the sales price from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract, and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

219.7(5) *Manufacturers who perform construction contracts.* When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer's part. Rule 701—219.6(423) provides a description of the sales tax treatment of this sort of transaction. The 60 percent rule, as described in subrule 219.7(3) above, is not applicable when calculating the amount of tax owed by a manufacturer.

219.7(6) *Examples.* The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner or acts as a

contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement, and whether or not a sale for resale has occurred.

EXAMPLE 1: The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in the manufacturer's factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to the other state.

EXAMPLE 2: The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on the manufacturer's own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property, so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the sales price to the Iowa builder/dealer.

EXAMPLE 3: The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation, the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4: The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa that will resell the home to the final customer. The manufacturer may deliver the home, or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation, the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5: The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this situation, the Iowa manufacturer does not owe any Iowa tax because Iowa Code section 423.2(1)"b" exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 6: The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the sales price of the home. The customer also wants a garage. The manufacturer agrees to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail, and the manufacturer should collect tax on the entire sales price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire sales price of the appliances.

EXAMPLE 7: The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer that is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, which transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer that is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

This rule is intended to implement Iowa Code sections 423.2(1)"b," 423.3(64), 423.5(1)"b," 423.6(9), and 423.6(10).

701—219.8(423) Types of construction contracts.

219.8(1) *Types of construction contracts.* Construction contracts include lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design-built contracts; and turnkey contracts.

219.8(2) *Scope.* A contract for the installation of one or more of the items listed below does not necessarily transform that contract into a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Thus, for example, hiring a contractor to install a light fixture in an existing building is not, without more, a construction contract or a contract for reconstruction, alteration, expansion, or remodeling.

219.8(3) *Examples.* The following is a nonexhaustive list of activities and items which could fall within the scope of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of a structure. This list should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual.

- Ash removal equipment (installed as distinguished from portable units)
- Automatic sprinkler systems (fire protection)
- Awnings and venetian blinds which become attached to real property
- Boilers (installed as distinguished from portable units)
- Brick work
- Builder's hardware
- Burglar alarm and fire alarm fixtures
- Caulking materials work
- Cement work
- Central air conditioner installation
- Coal handling equipment (installed as distinguished from portable units)
- Concrete work
- Counters, lockers (installed as distinguished from portable units), and prefabricated cabinets
- Drapery installation
- Electric conduit work and items relating thereto
- Electric distribution lines
- Electric transmission lines
- Floor covering which is permanently installed. Subrule 219.3(3) provides information on an exception to this regarding carpeting
- Flooring work
- Furnaces, heating boilers and heating units
- Glass and glazing work
- Gravel work (excluding landscaping)
- Installation of modular homes on foundations
- Lathing work
- Lead work
- Lighting fixtures
- Lime work
- Lumber and carpenter works
- Macadam work
- Millwork installation
- Mortar work
- Oil work
- Paint booths and spray booths (installed as distinguished from portable units)
- Painting work
- Paneling work
- Papering work
- Passenger and freight elevators
- Piping valves and pipe fitting work
- Plastering work

Plumbing work
 Prefabricated cabinets, counters, and lockers (installed as opposed to portable units)
 Putty work
 Refrigeration units (central plants installation as distinguished from portable units)
 Reinforcing mesh work
 Road construction (concrete, bituminous, gravel, etc.)
 Roofing work
 Sheet metal work
 Sign installation (other than portable sign installation)
 Steel work
 Stone work
 Stucco work
 Tile work—ceiling, floor and walls
 Underground gas mains
 Underground sewage disposal
 Underground water mains
 Vault doors and equipment
 Wallboard work
 Wall coping work
 Wallpaper work
 Water heater and softener installation
 Weather stripping work
 Wire net screen work
 Wood preserving work
 This rule is intended to implement Iowa Code sections 423.2(1)“c” and 423.3(37).

701—219.9(423) Machinery and equipment sales contracts with installation.

219.9(1) *Machinery and equipment sales with installation.* Machinery and equipment sales contracts with installation are transactions which are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. This rule should not be confused with subrule 219.3(3) regarding equipment. The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment which remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that “sales tax is included in the contract price.”

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

219.9(2) *Taxable services sales with installation.* Certain services which are enumerated in Iowa Code section 423.2 are subject to tax when performed under a contract for the installation of machinery and equipment which is not done in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. Examples of enumerated services include electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation which do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE: Company B contracts with Company A to furnish and install a portable conveyor unit in Company A’s new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on the sale of the portable conveyor unit. Installation charges would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, separately itemized on the

billing from Company B to Company A. If the installation charges involve the performance of one or more enumerated services, they would be subject to sales tax even when separately contracted for or separately itemized on the billing from Company B to Company A.

This rule is intended to implement Iowa Code sections 423.2(6), 423.3, and 423.5.

701—219.10(423) Contracts with equipment sales (mixed contracts). Construction contracts or contracts for reconstruction, alteration, expansion, or remodeling with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor, as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment.

219.10(1) Out-of-state supplier. As a consumer by statute of construction building materials, supplies, and building equipment, a contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier.

219.10(2) When machinery and equipment do not become real property. Machinery and equipment must be purchased for resale by the contractor if the machinery and equipment does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the sales price from a sponsor and remitting it to the department.

EXAMPLE: Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies which lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building which maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units which retain their identity as tangible personal property. The installation charges for the units which remain as tangible personal property would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the billing from Company B to Company A. If the installation charges involve the performance of one or more enumerated services, they would be subject to sales tax even when separately contracted for or separately itemized on the billing from Company B to Company A.

219.10(3) Lump-sum amount. In a mixed contract, the elements of the contract should be separated for sales tax purposes. When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

219.10(4) Permits. Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales and use tax permit.

This rule is intended to implement Iowa Code section 423.2(1) “b.”

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract or a contract for reconstruction, alteration, expansion, or remodeling does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment are tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, does not bear the weight of the structure, and does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.

219.11(1) Examples of tangible personal property that remains tangible personal property after installation. Under normal conditions, the following nonexclusive list remains tangible personal property after installation.

a. Furniture, including office furniture and equipment, washers and dryers, portable lamps, home freezers, portable appliances, and window air-conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment, and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors, and others performing a processing function with the items.

d. Radio and television sets and antennas, including radio, television, and cable television station equipment, but not broadcasting or telecommunications towers.

e. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens.

Therefore, sales of items that remain tangible personal property after installation are subject to sales tax. If the installation of such items involves the performance of one or more enumerated services, the labor charges are also subject to sales tax, unless an exemption applies.

219.11(2) *Examples of tangible personal property that becomes realty after installation.*

a. Under normal conditions, the following nonexhaustive list becomes a part of realty.

(1) Boilers and furnaces.

(2) Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.

(3) Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air-conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.

(4) Fixed (year-round) wharves and docks.

(5) Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. Rule 701—214.10(423) provides more information on drainage tile.

(6) Mobile and modular homes installed on foundations.

(7) Planted nursery stock.

(8) Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).

(9) Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).

(10) Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).

(11) Silos and grain storage bins.

(12) Storage tanks constructed on the site.

(13) Swimming pools (wholly or partially underground (except portable pools)).

(14) Truck platform scale foundations.

(15) Walk-in cold storage units that become a component part of a building.

b. *Exception for installation of new or replacement items.* Sales of items that become a part of a structure to contractors, subcontractors, or builders for use in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of a structure are retail sales subject to sales tax to be paid by the contractor, subcontractor, or builder. However, a contract for installation of new or replacement items in an existing structure is not necessarily a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of that structure.

EXAMPLE: A homeowner hires a contractor to replace the existing garbage disposal in the homeowner's house. This is not a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of the house. Therefore, the contractor must charge the homeowner sales tax on the full sales price of the garbage disposal. Additionally, because the installation of the garbage

disposal involves the performance of enumerated services, the installation labor charges are also subject to sales tax.

This rule is intended to implement Iowa Code sections 423.2(6) and 423.3(37).

701—219.12(423) Tangible personal property which becomes structures. Items which are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis.

219.12(1) Criteria to determine if tangible personal property has become a structure. The following are intended only to be a summation of factors which the department will consider in determining whether or not a project involves construction:

- a. The degree of architectural and engineering skills necessary to design and construct the structure.
- b. The overall scope of the business and the contractual obligations of the person designing and building the structure.
- c. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
- d. The size and weight of the structure.
- e. The permanency or degree of annexation of the structure to other real property which would affect its mobility.
- f. The cost of building, moving or dismantling the structure.

219.12(2) Example. A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7,000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of \$7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is considered a structure and not machinery or equipment.

This rule is intended to implement Iowa Code section 423.3(37).

701—219.13(423) Tax on enumerated services. The tax on the services enumerated in Iowa Code section 423.2 is a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of structures, the services are exempt from tax. Neither the repair nor the rental of machinery on the job site is exempt from tax under this rule. Rule 701—219.21(423) provides an explanation of the exemption in favor of rented machinery used by a contractor on a job site.

The distinction between a repair and new construction, reconstruction, alteration, expansion, and remodeling activities can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project are factors which determine whether certain enumerated services are exempt. An area of particular difficulty is the distinction between repair and remodeling. Remodeling a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof.

219.13(1) Repair. Since retailers, as defined in Iowa Code section 423.1(47), may purchase building materials, supplies, and equipment for resale, persons making taxable repairs are not considered to be owners, contractors, subcontractors, or builders and are not subject to the provisions of Iowa Code section 423.2(1)“b.” Repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors, or builders who may make repairs are subject to Iowa Code section 423.2(1)“b” and must pay tax at the time building materials, supplies, and equipment are purchased from vendors even though the contractors, subcontractors, or builders hold a valid sales tax permit. In determining who is a contractor and who is a retailer of repair services, the department

looks to the total business of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they may separately itemize labor and materials charges and collect sales tax on all charges; if the labor and materials charges are billed as one lump sum, the entire amount is subject to sales tax. A contractor's markup on a materials charge is part of any taxable sale. A contractor can take a credit for any tax paid on the purchase of materials that are sold as part of a service transaction.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in Iowa Code section 423.2, those persons shall collect and remit tax on the sales price. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. Rule 701—225.3(423) provides an explanation of when persons performing services sell the property that the persons use in performing those services to their customers. Nonexclusive examples of repair situations are as follows:

- a. Repair of broken or defective glass.
- b. Replacement of broken, defective, or rotten windows.
- c. Replacing individual or damaged roof shingles.
- d. Replacing or repairing a segment of worn-out or broken kitchen cabinets.
- e. Repair or replacement of broken or damaged garage doors or garage door openers.
- f. Replacing or repairing a part of a broken or worn tub, shower, or faucets.
- g. Replacing or repairing a broken water heater, furnace, or central air conditioning compressor.
- h. Restoration of original wiring in a house or building.

219.13(2) *New construction, reconstruction, alteration, expansion, and remodeling.* The following are examples of new construction, reconstruction, alteration, expansion, and remodeling activities:

- a. The building of a garage or adding a garage to an existing building is considered new construction.
- b. Adding a wooden redwood deck to an existing structure is considered new construction.
- c. Replacing the entire roof on an existing structure is considered reconstruction.
- d. Adding a new room to an existing building is considered new construction.
- e. Adding a new room by building interior walls is considered alteration.
- f. Replacing kitchen cabinets with some structural modification to the kitchen layout is considered remodeling.
- g. Laying a new floor over an existing floor is considered remodeling.
- h. Building a new wing to an existing building is considered an expansion.
- i. Rearranging the interior physical structure of a building is considered remodeling or alteration.
- j. Installing manufactured housing or a modular or mobile home on a foundation is considered new construction. However, rule 701—282.8(423) provides a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.
- k. Replacing an entire water heater, water softener, furnace, or central air conditioning unit.

In all instances of new construction, reconstruction, alteration, expansion, or remodeling, the contractor is the final consumer of the materials, supplies, or equipment used in completing the job and is therefore responsible for paying sales tax to its supplier on the full sales price of the materials, supplies, or equipment used in the project. However, the contractor is not to charge the owner sales tax on any labor charges associated with completing the job.

219.13(3) *“On or connected with.”* The term “on or connected with” is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. “On or connected with” does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive

toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

219.13(4) Time and physical relationship.

a. Time. The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

b. Physical. A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

c. Incidental relationship. On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For example, a homeowner hires a contractor to add a new room to an existing home. The existing home is in need of a number of the repairs described in subrule 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

d. Determination of taxability. Facts and motives are important in the determination of the taxability of services relating to construction activities. It should also be noted that taxes on enumerated services are applicable to repair or installation work that is not on or connected with new construction, reconstruction, alteration, expansion, or remodeling.

219.13(5) Various nontaxable services. Services associated with new construction or reconstruction, for example, which are not taxable include, but are not limited to, brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

219.13(6) Taxable construction-related services.

a. Carpentry repair or installation. Persons engaged in the business of carpentry, as the trade is known in the usual course of business, are selling a service subject to sales tax, regardless of whether they perform repair or installation. The carpentry services can be conducted on or within real or personal property.

b. Roof, shingle, and glass repair. Persons engaged in the business of repairing, restoring, or renovating roofs or shingles or restoring or replacing glass, whether the glass is personal property or affixed to real property, are selling a service subject to sales tax.

c. Electrical and electronic repair and installation.

(1) In general. Persons engaged in the business of repairing or installing electrical wiring, fixtures, or switches in or on real property, or repairing or installing any article of tangible personal property powered by electric current, are selling a service subject to sales tax. This includes installation of

semiconductors, such as vacuum tubes, transistors, or integrated circuits, or installation or repair of machinery or equipment that functions mainly through the use of semiconductors.

(2) New machinery or equipment. The sales price of the electrical or electronic installation is exempt from tax if the sales price is charged for the installation of new machinery or equipment.

(3) Definition. For purposes of this subrule:

“Installation” includes affixing electrical wiring, fixtures or switches to real property; affixing any article of personal property powered by electric current to any other article of personal property; or making any article of personal property powered by electric current operative with respect to its intended function or purpose.

d. Excavating and grading.

(1) In general. Persons engaged in the business of excavating and grading are selling services subject to sales tax.

(2) Definitions. For purposes of this subrule:

“Excavation” means the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. *“Excavation”* ordinarily includes not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface.

“Grading” means a physical change of the earth’s structure by scraping and filling in the surface to reduce it to a common level. *“Grading”* includes the reducing of the surface of the earth to a given line fixed as the grade, involving excavating, filling, or both.

e. Painting, papering and interior decorating.

(1) In general. Persons engaged in the business of painting, papering, and interior decorating are selling a service subject to sales tax.

(2) Definitions. For purposes of this subrule:

“Interior decoration” means the designing or decoration of the interior of houses or buildings, counseling with respect to such design or decoration, or the procurement of furniture fixtures or home or building decorations.

“Painting” means the covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on the surface in thin coats for decoration, protection, or preservation purposes. This includes all necessary preparations, including surface preparation. *“Painting”* does not include automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metal such as but not limited to chromium, bronze, tin, galvanized metal, or platinum.

“Papering” means the application of wallpaper or wall fabric to the interior of a house or building and any necessary preparations, including surface preparation.

(3) Incidental service. When a person provides interior decorating services without charge, incidental to the sale of real or tangible personal property, no sales tax shall be charged in addition to the tax paid on the sales price or any part thereof of the real or tangible personal property.

f. Pipe fitting and plumbing.

(1) In general. Persons engaged in the business of pipe fitting and plumbing are selling a service subject to sales tax.

(2) Definition. For purposes of this rule:

“Pipe fitting and plumbing” means the trade of fitting, threading, installing, and repairing pipes, fixtures, or apparatus used for heating, refrigeration, or air conditioning, or concerned with the introduction, distribution, and disposal of a natural or artificial substance.

g. Wood preparation.

(1) In general. Persons engaged in the business of wood preparation or treatment for others are selling a service subject to sales tax.

(2) Definition. For purposes of this rule:

“Wood preparation” includes all processes whereby wood is sawed from logs in measured dimensions, planed, sanded, oiled, or treated in any manner before being used to repair an existing structure or create or become a part of a new structure. If such preparation is engaged solely for the

purpose of processing lumber or wood products for ultimate sale at retail, such preparation may not be deemed as selling a service subject to sales tax.

h. Well drilling. Persons engaged in the business of well drilling are selling a service subject to sales tax.

i. Landscaping. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of a building or structure are not subject to sales tax. Rule 701—211.24(423) provides more information about landscaping services.

j. House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, for any reason, are selling a service subject to sales tax. The sales price from this service is not considered a transportation charge.

This rule is intended to implement Iowa Code section 423.2(6).

701—219.14(423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. More information can be found in rule 701—204.8(423).

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

701—219.15(423) Liability of subcontractors. A subcontractor providing materials and labor on the actual construction of a structure has the same status and tax responsibilities as a contractor under Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a contractor or a subcontractor, the individual or firm is considered a materials supplier rather than a subcontractor. This is true even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by materials suppliers to contractors shall be sold for resale, and the contractor must provide the materials supplier with a valid resale certificate.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

701—219.16(423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies, and equipment by a contractor or subcontractor in the completion of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Likewise, a contractor cannot be held responsible for the tax liability incurred on building materials, supplies, and equipment by a subcontractor in the completion of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—219.17(423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012, which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.

2. Form 35-013, which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.

3. Form 35-001, which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and, therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—219.18(423) Resale certificates. Whenever machinery and equipment which will remain tangible personal property after installation is purchased for a machinery and equipment contract by a contractor from a supplier, it should be purchased for resale. Rule 701—219.9(423) provides more information on this topic. Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Rule 701—219.4(423) and subrule 219.13(1) provide more information.

This rule is intended to implement Iowa Code section 423.45.

701—219.19(423) Reporting for use tax. An Iowa contractor can report use tax as consumed goods on a sales and use tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a sales and use tax return, which is available directly from the department of revenue, unless the contractor is registered with the department.

This rule is intended to implement Iowa Code section 423.31.

701—219.20(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders.

219.20(1) Exempt lease or rental of machinery and equipment. The sales price on the lease or rental only of the following types of machinery and equipment is exempt from tax: all machinery, equipment, and replacement parts directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of structures and all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the equipment and replacement parts so used. A contractor's, subcontractor's, or builder's purchases of this equipment would continue to be taxable, as would a lessor's purchases of machinery, equipment, or replacement parts for subsequent exempt rental to a contractor, subcontractor, or builder.

219.20(2) Exempt sales, including lease or rental of equipment. The sales price on the sale in any form, including lease or rental, of the following types of equipment is exempt from the tax imposed by Iowa Code chapter 423: self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. The sales price from a sale in a form other than that of a lease or rental is not exempt from all excise tax.

This rule is intended to implement Iowa Code sections 423.3(37) and 423.3(85).

701—219.21(423) Gravel and stone. When a contract is entered between a contractor and a governmental body and the contract calls for a stockpile delivery along a road to be improved, it is a sale of tangible personal property to the governmental body. Transactions of this type are exempt from tax. When a contract provides for the sale and delivery of materials and also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and is liable for sales tax. Tax applies on the sales price of the material.

This rule is intended to implement Iowa Code section 423.3(31).

701—219.22(423) Construction contracts with designated exempt entities. This rule applies to exempt sales of building materials, supplies, equipment, or services to certain persons performing

construction contracts for sponsors that are designated exempt entities and the continuing right of designated exempt entities and other persons to seek refund of taxes paid by persons performing construction contracts.

219.22(1) Definitions.

“*Construction contract*” means the same as defined in rule 701—219.8(423).

“*Designated exempt entity*” means the same as defined in Iowa Code section 423.3(80).

“*GovConnectIowa*” means the e-services portal of the department.

219.22(2) Registration with the department. A designated exempt entity seeking to issue exemption certificates to contractors, subcontractors, builders, or manufacturers performing construction contracts shall register with the department through GovConnectIowa. The designated exempt entity shall provide the following information:

- a. The name and address of the designated exempt entity.
- b. The federal identification number of the designated exempt entity.
- c. The name of the construction project or the project number for which exemption is requested.
- d. A general description of the construction project.
- e. The name and address of all contractors, subcontractors, builders, or manufacturers to which the designated exempt entity shall provide exemption certificates.
- f. Additional information as requested by the department if the status of the entity seeking registration as a designated exempt entity is unclear.

219.22(3) Exemption certificates. Once a designated exempt entity’s registration is completed and approved, the designated exempt entity can obtain exemption certificates to provide to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers may then provide these exemption certificates to retailers when purchasing building materials, supplies, equipment, or services to be used in completion of the construction contract with the designated exempt entity in order to make those purchases exempt from sales tax.

219.22(4) Exempt purchases, withdrawals from inventory, and manufacturers’ fabrication costs.

a. A contractor, subcontractor, or builder who purchases building materials, supplies, equipment, or services intending to use such property or services in the performance of a construction contract with a designated exempt entity shall purchase the property or services from a retailer exempt from tax if the property or services are subsequently used in the performance of that contract and the contractor, subcontractor, or builder presents an exemption certificate issued by the designated exempt entity to the retailer.

b. The withdrawal of building materials, supplies, or equipment from inventory by a contractor, subcontractor, or builder who is also a retailer is exempt from tax if the materials are withdrawn for use in construction performed for a designated exempt entity and an exemption certificate is received from the designated exempt entity.

c. The fabricated cost, as defined in rule 701—219.6(423), of building materials, supplies, or equipment purchased and consumed by the manufacturer of such property in the performance of a construction contract for a designated exempt entity is exempt from tax if an exemption certificate is received from the exempt entity and presented to a retailer.

d. Sales, withdrawals, or a manufacturer’s consumption of building materials, supplies, equipment, or services used in the performance of a construction contract for purposes other than incorporation into real property with subsequent loss of identity as tangible personal property are not eligible for the exemption described by this rule.

219.22(5) Refunds. A designated exempt entity that does not complete the registration process in order to provide exemption certificates to contractors, subcontractors, builders, or manufacturers in advance of its construction project may request a refund of sales tax the designated exempt entity paid to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers should provide the designated exempt entity with completed Iowa Contractor’s Statement forms. The designated exempt entity shall then submit a Construction Contract Claim for Refund form and all accompanying Iowa Contractor’s Statement forms to the department.

219.22(6) *Other sales.* 701—Chapter 212 provides more information regarding the taxability of other types of sales to entities that qualify as designated exempt entities.

This rule is intended to implement Iowa Code sections 423.3(80) and 423.4(1).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 220
“Exemptions Primarily of Benefit to Consumers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2 and 423.3

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt a new Chapter 220. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statutes to help the public understand exemptions that primarily benefit consumers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any classes of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification about exemptions that primarily benefit consumers.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact of the proposed rules.
 - Qualitative description of impact:
The rules reduce uncertainty about a variety of exemptions that primarily benefit consumers. Failing to adopt them would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department of implementing the rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about the applicability of exemptions that primarily benefit consumers.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on exemptions that primarily benefit consumers.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative was seriously considered by the Department.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without these rules would lead to confusion, questions to the Department, and potential errors.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 220 and adopt the following new chapter in lieu thereof:

CHAPTER 220 EXEMPTIONS PRIMARILY OF BENEFIT TO CONSUMERS

701—220.1(423) Newspapers, free newspapers and shoppers' guides.

220.1(1) *In general.* The sales price from the sale of newspapers, free newspapers, and shoppers' guides is exempt from tax. The sales price from the sale of magazines, newsletters, and other periodicals that are not newspapers is taxable.

220.1(2) *General characteristics of a newspaper.* A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink, and usually contains photographs. The format of a newspaper is that of sheets folded loosely together without stapling. The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

This rule is intended to implement Iowa Code section 423.3(55).

701—220.2(423) Food and food ingredients.

220.2(1) Most substances can easily be classified either as food, food ingredients, or nonfood items in accordance with Iowa Code section 423.3(57). There are, however, certain substances that are not readily distinguishable as food or nonfood and may present problems in judgment. The following guidelines apply to some of the more unique categories of eligible foods and food ingredients and ineligible nonfood items about which questions may arise. The guidelines and their lists are not to be considered all-inclusive:

a. Foods eligible for purchase with food coupons. Sales of almost all substances which may be purchased with food coupons issued by the United States Department of Agriculture are exempt from Tax. Sales of certain substances which can be purchased with food stamps but are neither food nor food ingredients are taxable.

These taxable sales include garden seeds and plants sold for use in gardens to produce food for human consumption. Seeds and plants eligible for purchase with food coupons include vegetable seeds and food-producing plants such as tomato and green pepper plants and fruit trees, food-producing roots, bushes, and bulbs (e.g., asparagus roots and onion sets) and seeds and plants used to produce spices for use in cooking foods. Sales of all these substances are taxable. Sales of chewing gum are taxable as sales of "candy."

b. Distilled water and ice. These substances, although having some nonfood uses, are largely used as food or as ingredients in food for human consumption. Unless these substances are specifically labeled for nonfood use or the recipient indicates that they will be used for some purpose other than as food for human consumption or as ingredients in food for human consumption, their sales are exempt from tax.

c. Specialty foods. This category of exempt foods includes special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, infant formulas, and certain foods commonly referred to as health food items. These substances are food products which are substituted for more commonly used food items in the diet, and thus they are purchased for ingestion by humans and are consumed for their taste or nutritional value. Examples of items in this category of eligible foods are Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds which are packaged for human consumption, and rose hips powder which is used for preparing tea. It is not possible to formulate a comprehensive list of exempt specialty foods. The guideline to be used to determine the eligibility of a specific product is the ordinary use of the product.

NOTE: If the product is primarily used as a food or as an ingredient in food, then it is an exempt item; if it is primarily used for medicinal purposes as either a therapeutic agent or a deficiency corrector and only occasionally used as a food, the product is not exempt under this provision.

d. Snack foods. These substances are food items and, therefore, are usually eligible for the exemption. Typical examples of snack foods are cheese puffs; corn chips; popcorn; peanuts; potato chips and sticks; packaged cookies, cupcakes, and donuts; and pretzels. Alcoholic beverages, candy, and soft drinks are examples of snack foods the sales of which are not exempt from tax; see subrule 220.3(2).

e. Others. There are certain eligible food substances which are normally consumed only after being incorporated into foods sold for ingestion or chewing by humans. Sales of substances which are

ingredients of items identical to those which are eligible for exemption when sold as finished products are sales eligible for exemption. Since these substances are food ingredients, their sales are exempt. An example is pectin. Pectin is the generic term for products marketed under various brand names and commonly used as a base in making jams and jellies. When pectin is incorporated into jams or jellies, it becomes part of a food for human consumption and, therefore, is an eligible food item. Other examples are lard and vegetable oils.

f. The following general classifications of food products are also exempt from tax unless taxable as prepared food; see rule 701—220.5(423):

- Bread and flour products
- Bottled water, unless it is a sweetened bottled water and thus taxable as a soft drink
- Cereal and cereal products
- Cocoa and cocoa products, unless taxable in the form of candy as in rule 701—220.4(423)
- Coffee and coffee substitutes, unless taxable as soft drinks; see paragraph 220.3(2) “*f*”
- Dietary substitutes, other than dietary supplements; see paragraphs 220.3(1) “*c*” and 220.3(2) “*a*”
- Eggs and egg products
- Fish and fish products
- Frozen foods
- Fruits and fruit products including fruit juices, unless taxable as soft drinks; see paragraph 220.3(2) “*f*”
- Margarine, butter, and shortening
- Meat and meat products
- Milk and milk products, including packaged ice cream products
- Milk substitutes, such as soy and rice milk substitutes
- Spices, condiments, extracts, and artificial food coloring
- Sugar and sugar products and substitutes, unless taxable in the form of candy as in rule 701—220.4(423)
- Tea, unless taxable as a soft drink; see paragraph 220.3(2) “*f*”
- Vegetables and vegetable products

220.2(2) Substances excluded from the term “food and food ingredients.” Sales of alcoholic beverages, candy, dietary supplements, food sold through vending machines, prepared food, soft drinks, and tobacco are not sales of “food” and are not exempt from tax by this rule.

a. “Alcoholic beverages” means beverages that are suitable for human consumption and contain one-half of 1 percent or more of alcohol by volume.

b. “Candy.” See rule 701—220.4(423).

c. “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients:

- (1) A vitamin.
- (2) A mineral.
- (3) An herb or other botanical.
- (4) An amino acid.
- (5) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(6) A concentrate, metabolite, constituent, extract, or combination of any of the ingredients in subparagraphs (1) through (5) that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and is required to be labeled as a dietary supplement, identifiable by the “supplement facts” box found on the label and as required pursuant to 21 Code of Federal Regulations 101.36.

Dietary supplements, as their name indicates, serve as supplements to food or food products rather than as “food,” and, therefore, are not included within the definition of that word. Since these substances serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible for the food and food ingredients exemption. In addition to

vitamin and mineral tablets or capsules, this category includes substances such as cod liver oil, which is used primarily as a source of vitamins A and D. It is not possible to provide a comprehensive list of other such items which are primarily used for medicinal purposes or as health aids and which may be stocked by authorized firms.

d. “Food sold through vending machines” means food dispensed from a machine or other mechanical device that accepts payment, other than food which would be qualified for exemption if purchased with coupons (commonly known as “food stamps”) issued under the federal Food Stamp Act of 1977, 7 United States Code 2011 et seq. Alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, and tobacco sold through vending machines are sold subject to tax in all instances because they are specifically excluded from this rule’s definition of “foods”; see subrule 220.3(2) generally. This paragraph “*d*” should be interpreted in such a fashion that if the sale of a substance is exempt from tax because it is a sale of “food” when the substance is sold by means other than a vending machine, then the sale of that same substance through a vending machine will also be exempt from tax. Conversely, if the sale of a substance by any means other than through a vending machine is taxable, then the sale of that same substance through a vending machine will also be taxable.

e. “Prepared food.” See rule 701—220.5(423).

f. “Soft drinks” means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks may be noncarbonated. “Soft drinks” does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; coffee and tea which are not sweetened; effervescent, noneffervescent, and mineral water sold in containers; beverages that contain greater than 50 percent of vegetable or fruit juice by volume.

Taxable soft drinks are noncarbonated water and soda water if naturally or artificially sweetened; soft drinks carbonated and noncarbonated including but not limited to colas, ginger ale, near beer, and root beer; bottled and sweetened tea and coffee; lemonade, orangeade, and all other drinks or punches with natural fruit or vegetable juice less than 50 percent by volume.

Beverage mixes and ingredients intended to be made into soft drinks are taxable. Beverage mixes or ingredients may be liquid or frozen, concentrated or nonconcentrated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned or unseasoned. Sales of beverage mixes to which a sweetener is to be added before drinking are taxable. Concentrates intended to be made into beverages which contain natural fruit or vegetable juice of less than 50 percent by volume are taxable.

Beverages, the sales of which are otherwise exempt, are taxable if sold as prepared food under rule 701—220.5(423).

Nondairy coffee “creamers” in liquid, frozen or powdered form are not beverages. Sugar or other artificial or natural sweeteners sold separately are not taxable as beverage ingredients. Specialty foods that are liquids or that are to be added to a liquid and that are intended to be a substitute in the diet for more commonly used food items are not beverages and are not taxable as beverages. These foods include infant formula.

g. “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

220.2(3) Other substances which are not food or food ingredients. Various products are not purchased for ingestion or chewing by humans or, if they are, are not consumed for their taste or nutritional value. Therefore, they are not purchased exempt from tax under this rule. They include, but are not limited to, the following:

a. Health aids. Over-the-counter medicines and other products used primarily as health aids or therapeutic agents are not foods since they are consumed for their medicinal value as opposed to their nutritional value or taste. Such products include aspirin, cough drops or syrups and other cold remedies, antacids, and all over-the-counter medicines or other products used as health aids. In addition to these commonly used health aids, any product used primarily for medicinal purposes is ineligible. An example of such products is slippery elm powder, a demulcent which is used to soothe sore throats.

b. Items not exempt. The following general classifications of products are subject to tax:

Cosmetics

Household supplies

Paper products
 Pet foods and supplies
 Soaps and detergents
 Tobacco products
 Toiletry articles
 Tonics
 Lunch counter foods or foods prepared for consumption on the premises of the retailer
 This rule is intended to implement Iowa Code section 423.3(57).

701—220.3(423) Candy.

220.3(1) Definitions.

a. Candy. For the purposes of this rule, “candy” is a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration. Any preparation to which flour has been added only for the purpose of excluding the candy’s sales from tax and not for any legitimate purpose, culinary or otherwise, shall not be sold exempt from tax under this rule. This definition is intended to be used when a person is trying to determine if a product that is commonly thought of as “candy” is in fact “candy.” For example, the definition would be applied in a situation where a person is trying to determine if a product is “candy” as opposed to a cookie. The definition is not intended to be applied to every type of food product sold. Many products, such as meat products, breakfast cereals, potato chips, and canned fruits and vegetables are not commonly thought of as “candy.” The definition of “candy” is not applicable to products such as these since they are not commonly thought of as candy.

b. Preparation. Candy must be a “preparation” that contains certain ingredients, other than flour. A “preparation” is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the definition of “candy.” For example, reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.

c. Bars, drops or pieces. Candy must be sold in the form of bars, drops, or pieces.

(1) A “bar” is a product that is sold in the form of a square, oblong, or similar form. For example, if Company A sells one-pound square blocks of chocolate, the blocks of chocolate are “bars.”

(2) A “drop” is a product that is sold in a round, oval, pear-shaped, or similar form. For example, if Company B sells chocolate chips in a bag, each individual chocolate chip contains all of the ingredients indicated on the label and the chocolate chips are “drops.”

(3) A “piece” is a portion that has the same makeup as the product as a whole. Individual ingredients and loose mixtures of items that make up the product as a whole are not pieces. EXCEPTION: If a loose mixture of different items that make up the product as a whole are all individually considered candy and are sold as one product, that product is also candy.

EXAMPLE 1: Company C sells jellybeans in a bag. Each jellybean is made up of the ingredients indicated on the label. Each jellybean is a “piece” or “drop.”

EXAMPLE 2: Company D sells trail mix in a bag. The product being sold (trail mix) is made up of a mixture of carob chips, peanuts, raisins, and sunflower seeds. The individual items that make up the trail mix are not “pieces,” but instead are the ingredients, which, when combined, make up the trail mix. Therefore, the trail mix is not sold in the form of bars, drops, or pieces.

EXAMPLE 3: Company E sells a product called “candy lovers mix.” Candy lovers mix is a product that is made up of a loose mixture of jellybeans, toffee, and caramels. Individually, the jellybeans, toffee, and caramels are all candy. The sale of the mixture is the sale of candy since all of the individual items that make up the product are individually considered to be candy.

EXAMPLE 4: Company F sells cotton candy which is packaged and sold in grocery stores. Cotton candy contains sugar, corn syrup, water, coloring, and flavoring; it does not contain flour. Cotton candy is not “candy” because it is not sold in the form of a bar, drop, or piece. Cotton candy is, however, “prepared food” under Iowa Code section 423.3(57) “f.”

d. Flour. In order for a product to be treated as containing “flour,” the product label must specifically list the word “flour” as one of the ingredients. There is no requirement that the “flour” be grain-based, and it does not matter what the flour is made from. Many products that are commonly thought of as “candy” contain flour, as indicated on the ingredient label and therefore are specifically excluded from the definition of “candy.” Ingredient labels must be examined to determine which products contain flour and which products do not contain flour. Any preparation to which flour has been added only for the purpose of excluding its sales from tax and not for any legitimate purpose, culinary or otherwise, shall not be sold exempt from tax under this rule. For example, a candy bar that contains flour, for a legitimate purpose, is excluded from the definition of “candy.”

EXAMPLE 1: The ingredient list for a breakfast bar lists “flour” as one of the ingredients. This breakfast bar is not “candy” since it contains flour.

EXAMPLE 2: The ingredient list for a breakfast bar lists “peanut flour” as one of the ingredients. This breakfast bar is not “candy” because it contains flour.

EXAMPLE 3: The ingredient list for a breakfast bar that otherwise meets the definition of “candy” lists “whole grain” as one of the ingredients, but does not specifically list “flour” as one of the ingredients. This breakfast bar is “candy” because the word “flour” is not included in the ingredient list.

EXAMPLE 4: Company E sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates identifies flour as one of the ingredients. The box of chocolates is not “candy” since flour is identified as one of the ingredients on the label.

EXAMPLE 5: Company F sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates, which otherwise meets the definition of “candy,” does not identify flour as one of the ingredients. The box of chocolates is “candy.”

EXAMPLE 6: Company G sells high-end licorice—licorice A and licorice B. Licorice A would otherwise be “candy,” but its wrapper lists “flour” as an ingredient. Licorice A is not “candy.” Licorice B is the same as licorice A, except it does not contain “flour.” Licorice B is “candy.”

e. Other ingredients or flavorings. “Other ingredients or flavorings” as used in this rule means other ingredients or flavorings that are similar to chocolate, fruits or nuts. This phrase includes candy coatings such as carob, vanilla and yogurt; flavorings or extracts such as vanilla, maple, mint, and almond; and seeds and other items similar to the classes of ingredients or flavorings. This phrase does not include meats, spices, seasonings such as barbeque or cheddar flavor, or herbs which are not similar to the classes of ingredients or flavorings associated with chocolate, fruits, or nuts, unless the product otherwise meets the definition of “candy.”

EXAMPLE 1: Retailer A sells barbeque-flavored peanuts. The ingredient label for the barbeque-flavored peanuts indicates that the product contains peanuts, sugar and various other ingredients, including barbeque flavoring. Since the barbeque-flavored peanuts contain a combination of sweeteners and nuts, and flour is not listed on the label and the nuts do not require refrigeration, barbeque-flavored peanuts are “candy.”

EXAMPLE 2: Retailer B sells barbeque potato chips. Potato chips are potatoes, a vegetable, and are not commonly thought of as candy. The barbeque potato chips are “food and food ingredients” and not “candy.” The fact that the ingredient label for the barbeque potato chips indicates that the product contains barbeque seasoning which contains a sweetener does not change the fact that the barbeque potato chips are not commonly thought of as candy.

f. Sweeteners. The term “natural or artificial sweeteners” as used in this rule means an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.

g. Refrigeration. A product that otherwise meets the definition of “candy” is not “candy” if it requires refrigeration. A product “requires refrigeration” if it must be refrigerated at the time of sale or after being opened. In order for a product to be treated as requiring refrigeration, the product label must indicate that refrigeration is required. If the label on a product that contains multiple servings indicates that it “requires refrigeration,” smaller size packages of the same product are also considered to “require

refrigeration.” A product that otherwise meets the definition of “candy” is “candy” if the product is not required to be refrigerated, but is sold refrigerated for the convenience or preference of the customer, retailer, or manufacturer.

EXAMPLE 1: Company A sells sweetened fruit snacks in a bag that contains multiple servings. The label on the bag indicates that after opening, the sweetened fruit snacks must be refrigerated. The sweetened fruit snacks “require refrigeration.”

EXAMPLE 2: Company A sells sweetened fruit snacks in single-serving containers. Other than for packaging, the sweetened fruit snacks are identical to the sweetened fruit snacks in Example 1 above. However, since this container of sweetened fruit snacks only contains one serving, it is presumed that it will be used immediately, and the label does not indicate that after opening, the product must be refrigerated. Even though the label does not contain the statement that after opening the sweetened fruit snacks must be refrigerated, these sweetened fruit snacks are considered to “require refrigeration.”

EXAMPLE 3: Company A sells chocolate truffles. The label on the truffles indicates to keep the product cool and dry, but does not indicate that the product must be refrigerated. Since the chocolate truffles are not required to be refrigerated, even though the label indicates to keep them cool, the chocolate truffles do not “require refrigeration.”

220.3(2) Nonexclusive examples.

a. Taxable candy. Examples of items taxable as candy include, but are not limited to: preparations of fruits, nuts, or other ingredients in combination with sugar, honey, or other natural or artificial sweeteners in the form of bars, drops, or pieces; caramel-coated or other candy-coated apples or other fruit; candy-coated popcorn; hard or soft candies including jellybeans, taffy, licorice not containing flour, marshmallows, and mints; dried fruit leathers or other similar products prepared with natural or artificial sweeteners; candy breath mints; chewing gum; and mixes of candy pieces.

Sales of items which are normally sold for use as ingredients in recipes but which can be eaten as candy are taxable. Examples of these items include, but are not limited to, sweetened baking chocolate in bars or pieces; white and dark chocolate almond bark; toffee bits; M&M’s, including those sold for baking; candy primarily intended for decorating baked goods; and sweetened baking chips, including mint chips, peanut butter chips, butterscotch chips, and chocolate chips.

b. Nontaxable items. Sales of the following are generally not taxable as candy: jams, jellies, preserves, or syrups; frostings; dried fruits without added sweetener; breakfast cereals; prepared fruit in a sugar or similar base; ice cream or other frozen desserts covered with chocolate or similar coverings; cotton candy; cakes, cookies, and similar products covered with chocolate or other similar coating; and granola bars. However, these and similar items are taxable if sold as prepared food under rule 701—220.5(423).

220.3(3) Bundled transaction including candy.

a. Candy and food. Products that are a combination of items that are defined as “candy” under this rule and items that are defined as “food and food ingredients” under rule 701—231.3(423) are “bundled transactions” when the items are distinct and identifiable and are sold for one nonitemized price, unless the seller’s sales price or purchase price of the candy accounts for 50 percent or less of the seller’s sales price or purchase price of the bundled transaction as provided under Iowa Code section 423.2(8) “d”(4). For example, a bag of multiple types of individually wrapped bars that is sold for one price is two or more distinct and identifiable products sold for one nonitemized price. For purposes of determining whether such a bag of individually wrapped bars is a “bundled transaction,” the following criteria apply:

(1) Ingredients listed separately.

1. If a package contains individually wrapped bars, drops, or pieces and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces that have “flour” listed as an ingredient are “food and food ingredients” and those bars, drops, or pieces which do not have “flour” listed as an ingredient are “candy.” The determination of whether the package as a whole meets the definition of “bundled transaction” is based on the percentage of bars, drops, or pieces that meet the definition of “food and food ingredient” as compared to the percentage of bars, drops, or pieces that meet the definition of “candy.”

2. Determining the percentage. For purposes of determining the percentage of the sales price or purchase price of the bars, drops, or pieces that meet the definition of “candy” as compared to all of the bars, drops, or pieces contained in the package, the retailer may presume that each bar, drop, or piece contained in the package has the same value.

3. Presumption of product amount. A retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

EXAMPLE: Retailer B sells bulk food and food ingredients by the pound. Each food and food ingredient is in a separate bin or container. Some of the food and food ingredients are “candy” and some of them are not because they contain flour. However, regardless of the items chosen, the retailer charges the customer \$3.49/lb. Customer C selects some items that are “candy” and some that are not and puts them in a bag. Since some of the items in the bag are “candy,” the retailer shall treat the entire package as a bundled transaction containing primarily “candy,” unless the retailer ascertains that the sales price or purchase price of the candy in the bag is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

(2) Ingredients listed together. If a package contains individually wrapped bars, drops, or pieces and all of the ingredients for each of the products included in the package are listed together, as opposed to being listed separately by each product included as explained in subparagraph (1) above, and even if the ingredient lists “flour” as an ingredient, the product will be treated as “candy,” unless the retailer is able to ascertain that the sales price or purchase price of the candy in the package is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

The retailer may presume that each bar, drop, or piece contained in the package has the same value. The retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

b. Combination of ingredients. Products whose ingredients are a combination of various unwrapped food ingredients that alone are not “candy,” along with unwrapped food ingredients that alone are “candy,” such as breakfast cereal and trail mix with candy pieces, are considered “food and food ingredients” and are not “candy.” Sales of these products are not “bundled transactions” because there are not two or more distinct and identifiable products being sold. The combination of the ingredients results in a single product.

This rule is intended to implement Iowa Code sections 423.2(8) and 423.3(57).

701—220.4(423) Prepared food. Sales of “prepared food” are subject to tax.

220.4(1) Prepared food. “Prepared food” means any of the following:

- a.* Food sold in a heated state or heated by the seller, including food sold by a caterer.
- b.* Two or more food ingredients mixed or combined by the seller for sale as a single item.
- c.* Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport food.

The types of retailers who are generally considered to be offering prepared food for sale include restaurants, coffee shops, cafeterias, convenience stores, snack shops, and concession stands including those at recreation and entertainment facilities. Other retailers that often offer prepared food include vending machine retailers, mobile vendors, and concessionaires operating facilities for such activities as education, office work, or manufacturing.

If food is sold for consumption on the premises of a retailer, the food is rebuttably presumed to be prepared food. “Premises of a retailer” means the total space and facilities under control of the retailer or available to the retailer, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer, for the purpose of sale of prepared food and drink or for the purpose of consumption of prepared food and drink sold by the retailer. Availability of self-service heating or other preparation facilities or eating facilities such as tables and chairs and knives, forks, and spoons, indicates that food, food products, and drinks are sold for consumption on the premises of the retailer and are subject to tax as sales of prepared food.

The following examples are intended to show some of the situations in which sales are taxable as sales of prepared food and drink.

EXAMPLE A: A movie theater owner operates a movie theater and a concession stand in the lobby of the theater. There is not a separate area set aside for eating facilities. Sales of prepared food and drink through the concession stand are taxable.

EXAMPLE B: As a convenience to employees, a manufacturer owns and operates several food and drink vending machines located on the premises of the plant. No separate seating or other facilities for eating are provided. Sales of prepared food and drink through the vending machines are taxable.

EXAMPLE C: Mobile vendor units located throughout an office are operated by the owner of the business and are stocked with snack food priced to cover the cost of the items to the employer. No separate eating facilities are provided. Sales of prepared food through the mobile vendors are taxable.

EXAMPLE D: An insurance company hires a caterer to run a cafeteria which provides food, at a low cost, to its employees. The insurance company also pays the caterer an amount, per month, which varies with the number of meals the caterer serves to provide this food service. The caterer does not lease the cafeteria premises; thus the premises remains under the control of the insurance company. In this case, the caterer sells the food in a space made “available to the retailer [caterer],” and the amount which the insurance company pays, on a monthly basis, to the caterer is presumed to be the taxable sales price from the sale of prepared food, as well as the amount paid by the employees to the caterer.

220.4(2) Examples. The following are additional examples of foods that either are or are not “prepared foods,” the sales price of which is taxable.

EXAMPLE A: A supermarket retailer cuts Bibb and romaine lettuce, mixes them together, and places them in a bag for sale. This is food which is only cut and repackaged. Its sale is not the sale of prepared food; thus its sale is exempt from tax.

EXAMPLE B: The same factual situation as Example A above applies, except that the lettuce is mixed with a salad dressing, placed in a container, and sold as a salad which is ready to eat. Sale of the salad is a taxable sale of “prepared food.”

EXAMPLE C: A supermarket retailer slices a roll of cotto salami and a roll of regular salami. The retailer places ten slices of each in the same container and sells the combination as an Italian luncheon meat variety pack. This is, again, the sale of food which is only cut and repackaged. The sale of the salami is exempt from tax.

EXAMPLE D: The same factual circumstances as in Example C apply, except that the retailer takes the sliced salami, places it between two slices of bread, adds some condiments, surrounds the meat, bread, and condiments with plastic, and sells the result as a ready-to-eat sandwich. This is prepared food, “two or more food ingredients . . . combined by the seller for sale as a single item,” and more is done to the ingredients than cutting and repackaging. Sales of the sandwiches are taxable.

This rule is intended to implement Iowa Code section 423.3(57).

701—220.5(423) Prescription drugs. The sales price from the sale of prescription drugs dispensed for human use or consumption in accordance with subrules 220.6(3) and 220.6(4) shall be exempt from tax. The sales price from the sale of oxygen or insulin purchased for human use or consumption (whether or not the oxygen or insulin is prescribed) is exempt from tax as a prescription drug.

220.5(1) Ultimate user. The term “ultimate user” means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual’s own use or for the use of a member of the individual’s household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The term is limited to natural persons, and does not include any legal persons such as corporations.

220.5(2) Tax exemption. The sale of a prescription drug is exempt from tax only if the drug is intended to be prescribed or dispensed to an ultimate user. A drug is intended to be prescribed or dispensed to an ultimate user only if the drug is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user’s body.

EXAMPLE A: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption shall be deemed a drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE B: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE C: A federal law permits but does not require the painkiller mentioned in Example B to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

220.5(3) *Persons authorized to dispense prescription drugs.* In order for a prescription drug or device to qualify for an exemption, it must be dispensed by anyone authorized under Iowa law to dispense prescription drugs or devices in this state or by anyone licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

220.5(4) *Disposition of prescription drugs.* Prescription drugs may be dispensed either directly from one of the persons licensed in subrule 220.6(3) who may also prescribe drugs or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in subrule 220.6(3) who may also prescribe drugs shall be sufficient evidence that a drug is exempt from tax. When a person who prescribes a drug is also the dispenser, the drug will not require a prescription by such person, but the drug must be recorded as if a prescription would have been issued or required. If this condition is met, the sales price from the sale of the drug is exempt from tax.

220.5(5) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under subrule 220.6(3) is required to collect sales tax on any prescription drugs.

220.5(6) *Prescription drugs purchased by hospitals for resale.* This subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (1) the drug is actually transferred to the patient; (2) the drug is transferred in a form or quantity capable of a fixed or definite price value; (3) the hospital and the patient intend the transfer to be a sale; and (4) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug.

A hospital's purchase of a prescription drug for purposes other than resale will still be exempt from tax if a drug is intended to be prescribed to an ultimate user and the hospital's use of the drug is otherwise exempt under subrule 220.6(1).

This rule is intended to implement Iowa Code section 423.3(60).

701—220.6(423) Other medical devices. The sales price from the sale of other medical devices is exempt from tax. The term "other medical devices" means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user. The term "other medical devices" does not include prosthetic devices, durable medical equipment, or mobility enhancing equipment. For purposes of this rule, the term "ultimate user" has the same meaning as in subrule 220.6(1).

220.6(1) Definitions.

"*Anesthesia trays*" includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

"*Biopsy*" means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

“*Biopsy needles*” includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, Rosenthal-type needles, and “J” Jamshidi needles are all examples of biopsy needles.

“*Cannula*” means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and abelson cricothyrotomy cannulas.

“*Catheter*” means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: Robinson/nelaton catheters, all types of Foley catheters (e.g., pediatric and irrigating), three-way catheters, suction catheters, IV catheters, angiocath catheters and male and female catheters.

“*Catheter trays.*” Universal Foley catheter trays, economy Foley trays, urethral catheterization trays and catheter trays with domed covers are nonexclusive examples of these trays.

“*Diabetic testing materials*” means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

“*Drug infusion device*” means a device designed for the slow introduction of a drug solution into the human body. The term includes devices which infuse by means of pumps or gravity flow (drip infusion).

“*Fistula*” means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

“*Hypodermic syringe*” means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

“*Insulin*” means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

“*Kit*” means a combination of medical equipment and supplies used to perform one particular medical procedure which is packaged and sold as a single item.

“*Myelogram*” means a radiographic picture of the spinal cord. A “radiographic picture” is one taken using radiation other than visible light.

“*Nebulizer*” means a mechanical device which converts a liquid to a spray or fog.

“*Oxygen equipment*” means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannulas, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

“*Set.*” See “kit” above.

“*Tray.*” See “kit” above.

220.6(2) The sales price from the sale of the following other medical devices is exempt from tax:

- a. Sales of insulin, hypodermic syringes, and diabetic testing materials.
- b. Sales and rentals of oxygen equipment.
- c. Sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets, all of which are not taxable.

220.6(3) Component parts. The sales price from the sale of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sales price from the sale of the component part, standing alone, is otherwise exempt. For instance, the sales price from the sale of a biopsy needle or an invasive catheter will be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, the sales price from the sale of catheter introducers, disposable latex gloves, rayon balls, forceps, and specimen bottles is exempt from tax when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

This rule is intended to implement Iowa Code section 423.3(60).

701—220.7(423) Prosthetic devices, durable medical equipment, and mobility enhancing equipment.

220.7(1) Prosthetic devices. The sales price from the sale of prosthetic devices is exempt from tax.

220.7(2) Durable medical equipment and mobility enhancing equipment. The sales price from the sale of durable medical equipment and mobility enhancing equipment prescribed for human use which meet the provisions of subrules 220.8(3) and 220.8(4) is exempt from tax. “Prescribed” refers to a prescription issued in any form of oral, written, electronic, or other means of transmission by any of the persons described in paragraphs 220.6(3) “a” through “j.”

220.7(3) Definitions.

a. “Durable medical equipment” means equipment, including repair and replacement parts, but does not include mobility enhancing equipment, to which all of the following apply:

- (1) Can withstand repeated use.
- (2) Is primarily and customarily used to serve a medical purpose.
- (3) Generally is not useful to a person in the absence of illness or injury.
- (4) Is not worn in or on the body.
- (5) Is for home use only.
- (6) Is prescribed by a practitioner.

b. “Mobility enhancing equipment” means equipment, including repair and replacement parts, but does not include durable medical equipment, to which all of the following apply:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle.
- (2) Is not generally used by persons with normal mobility.
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
- (4) Is prescribed by a practitioner.

c. “Prosthetic device” means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to do any of the following:

- (1) Artificially replace a missing portion of the body.
- (2) Prevent or correct physical deformity or malfunction.
- (3) Support a weak or deformed portion of the body.

The term “prosthetic device” includes, but is not limited to, orthopedic or orthotic devices, ostomy equipment, urological equipment, tracheostomy equipment, and intraocular lenses.

The following is a nonexclusive list of prosthetic devices:

| | | |
|-----------------------------|-----------------------------|----------------------------|
| Artificial arteries | Drainage bags | Prescription eyeglasses |
| Artificial breasts | Hearing aids | Stoma bags |
| Artificial ears | Ileostomy devices | Tracheal suction catheters |
| Artificial eyes | Intraocular lenses | Tracheostomy care and |
| Artificial heart valves | Karaya paste | cleaning starter kits |
| Artificial implants | Karaya seals | Tracheostomy cleaning |
| Artificial larynx | Organ implants | brushes |
| Artificial limbs | Ostomy belts | Tracheostomy tubes |
| Artificial noses | Ostomy clamps | Urinary catheters |
| Artificial teeth | Ostomy cleaners | Urinary drainage bags |
| Cardiac pacemakers | and deodorizers | Urinary irrigation tubing |
| Contact lenses | Ostomy pouches | Urinary pouches |
| Cosmetic gloves | Ostomy stoma caps and paste | |
| Dental bridges and implants | Penile implants | |

d. “*Orthotic device*” means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

e. “*Orthopedic device*” means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. A hot tub or spa is not an orthopedic device.

The following is a nonexclusive list of orthopedic devices:

| | | |
|---------------------------------|------------------------------|--|
| Abdominal belts | Clavicle splints | Nerve stimulators |
| Alternating pressure mattresses | Corrective braces | Orthopedic implants |
| Alternating pressure pads | Corrective shoes | Orthopedic shoes |
| Anti-embolism stockings | Crutch cushions | Patient lifts |
| Arch supports | Crutch handgrips | Plaster (surgical) |
| Arm slings | Crutch tips | Rib belts |
| Artificial sheepskin | Crutches | Rupture belts |
| Bone cement | Decubitus prevention devices | Sacroiliac supports |
| Bone nails | Dorsolumbar belts | Sacrolumbar belts |
| Bone pins | Dorsolumbar supports | Sacrolumbar supports |
| Bone plates | Elastic bandages | Shoulder immobilizers |
| Bone screws | Elastic supports | Space shoes |
| Bone wax | Exercise devices | Splints |
| Braces | Head halters | Traction equipment |
| Canes | Hernia belts | Transcutaneous electrical nerve stimulators (tens units) |
| Casts | Iliac belts | Trapezes |
| Cast heels | Invalid rings | Trusses |
| Cervical braces | Knee immobilizers | Walkers |
| Cervical collars | Lumbosacral supports | Wheelchairs |
| Cervical pillows | Muscle stimulators | |

f. “*Related devices.*” The sales price from the sale of devices that are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices is exempt from tax.

g. “*Medical equipment and supplies.*” The scope of the term “medical equipment and supplies” is broader than the terms “prescription drugs,” “prosthetic devices,” “durable medical equipment,” “mobility enhancing equipment,” and “other medical devices.” While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items which are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 220.6(1), 220.8(1), and 220.8(2) and rule 701—220.7(423). The sales price from the sale of the following items is generally taxable.

| | | |
|---------------------|-----------------------|----------------------|
| Adhesive bandages | Contact lens solution | Hot water bottles |
| Aneurysm clips | Convuluted pads | Ice bags |
| Arterial bloodsets | Corrective pessaries | Ident-a-bands |
| Aspirators | Cotton balls | Incontinent garments |
| Athletic supporters | Diagnostic kits | Incubators |
| Atomizers | Dialysis chairs | Infrared lamps |
| Autolit | Dialysis supplies | Inhalators |
| Back cushions | Dietetic scales | Iron lungs |

| | | |
|-------------------------------|------------------------------------|--|
| Bathing aids | Disposable diapers | Irrigation apparatus |
| Bathing caps | Disposable gloves | IV connectors |
| Bedpans | Disposable underpads | Laminar flow equipment |
| Bedside rails | Donor chairs | Latex gloves |
| Bedside tables | Dressings | Leukopheresis pumps |
| Bedside trays | Dry aid kits for ears | Lymphedema pumps |
| Bedwetting prevention devices | EKG paper | Manometer trays |
| Belt vibrators | Ear molds | Massagers |
| Blood cell washing equipment | Electrodes (other than tens units) | Maternity belts |
| Blood pack holders | Emesis basins | Medigrade tubing |
| Blood pack trays | Enema units | Modulung oxygenators |
| Blood pack units | First-aid kits | Moist heat pads |
| Blood pressure meters | Foam slant pillows | Myringotomy tubes |
| Blood processing supplies | Gauze bandages | Nebulizers (hypodermic) |
| Blood tubing | Gauze packings | Overbed tables |
| Blood warmers | Gavage containers | Page turning devices |
| Breast pumps | Geriatric chairs | Pap smear kits |
| Breathing machines | Grooming aids | Paraffin baths |
| Cardiac electrodes | Hand sealers | Physicians' instruments |
| Cardiopulmonary equipment | Hearing aid carriers | Pigskin |
| Chair lifts | Hearing aid repair kits | Plasma extractors |
| Clamps | Heart stimulators | Plasma pheresis units |
| Clip-on ashtrays | Heat lamps | Plastic heat sealers |
| Commode chairs | Heat pads | Prescribed device repair kits and batteries |
| Connectors | Hemolators | Respirators |
| Contact lens cases | Hospital beds | Resuscitators |
| Sauna baths | Steri-peel | Transfer boards |
| Security pouches | Stools | Tube sealers |
| Servipak dialysis supplies | Suction equipment | Underpads |
| Shelf trays | Sunlamps | Urinals |
| Shower chairs | Surgical bandages | Vacutainers |
| Side rails | Surgical equipment | Vacuum units |
| Sitz bath kit | Suspensories | Vaporizers |
| Specimen containers | Sutures | Vibrators |
| Sponges (surgical) | Thermometers | Whirlpools |
| Stairway elevators | Toilet aids | X-ray film |
| Staples | Tourniquets | |

220.7(4) Power devices. The sales price from the sale of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries which can be used to operate a number of devices, but batteries designed solely for use in hearing aids are exempt.

This rule is intended to implement Iowa Code section 423.3(60).

701—220.8(423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article

is less than \$100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2004, this period began at 12:01 a.m. on Friday, August 6, and ended at 12 midnight on Saturday, August 7. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

220.8(1) Definitions. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

“Accessories” includes, but is not limited to, jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

“Clothing or footwear” means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

“Eligible property” means an item of a type, such as clothing, that qualifies for Iowa’s sales tax holiday.

“Special clothing or footwear” is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

220.8(2) Exempt sales.

a. Required price. The exemption applies to each article of clothing or footwear selling for less than \$100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for \$80 each, both items qualify for the exemption even though the customer’s total purchase price (\$160) exceeds \$99.99. The exemption does not apply to the first \$99.99 of an article of clothing or footwear selling for more than \$99.99. For example, if a customer purchases a pair of pants costing \$110, sales tax is due on the entire \$110.

b. Order date and back orders. For the purpose of the sales tax holiday, eligible property qualifies for exemption if: the item is both delivered to and paid for by the customer during the exemption period; or the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an “in date” stamp on a mail order or assignment of an “order number” to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

220.8(3) Taxable sales. This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for \$90 and pays \$15 to have the pants cuffed, the \$90 charge for the pants is exempt, but tax is due on the \$15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

220.8(4) Special situations.

a. *Articles normally sold as a unit.* Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for \$150, the pair cannot be split in order to sell each shoe for \$75 to qualify for the exemption. If a suit is normally priced at \$225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than \$100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than \$100.

b. *Sales of exempt clothing combined with gifts of taxable merchandise.* When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than \$100 during the exemption period.

c. *Layaway sales.* A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. A sale of eligible property under a layaway sale qualifies for exemption if: final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

d. *Returns.* For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

e. *Different time zones.* The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and the seller is located in another.

220.8(5) Calculating taxable and exempt sales price—discounts, coupons, buying at a reduced price, and rebates.

a. *Discounts.* A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to \$99.99 or less, the item may qualify for the exemption. For example, a customer buys a \$150 dress and a \$100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the dress is \$135, and the blouse is \$90. The dress is taxable (it is over \$99.99), and the blouse is exempt (it is less than \$99.99).

b. *Coupons.* When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount if the retailer is not reimbursed for the coupon amount by a third party. Therefore, a retailer's coupon can be used to reduce the sales price of an item to \$99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at \$110 with a coupon worth \$20 off, the final sales price of the shoes is \$90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item.

c. *Buy one, get one free or for a reduced price or "two for the price of one" sales.* The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," or "two for the

price of one” cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1: A retailer advertises pants as “buy one, get one free.” The first pair of pants is priced at \$120; the second pair of pants is free. Tax is due on \$120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for \$60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50 percent off, selling each pair of \$120 pants for \$60, each pair of pants qualifies for the exemption.

EXAMPLE 2: A retailer advertises shoes as “buy one pair at the regular price, get a second pair for half price.” The first pair of shoes is sold for \$100; the second pair is sold for \$50 (half price). Tax is due on the \$100 shoes, but not on the \$50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for \$75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25 percent off, thereby selling each pair of \$100 shoes for \$75, each pair of shoes qualifies for the exemption.

EXAMPLE 3: A retailer advertises shirts as “buy two for the price of one” for \$140. Tax is due on \$140. Each shirt cannot be rung up as costing \$70. However, as described in Examples 1 and 2 above, the \$140 cost of each shirt can be discounted to bring the price of each shirt within the exemption’s limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for \$110 and receives a \$12 rebate from the manufacturer. The retailer must collect tax on the \$110 sales price of the sweater. Reference 701—subrule 212.3(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (reference rule 701—288.13(423) for explanation) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

220.8(6) Treatment of various transactions associated with sales.

a. Rain checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for a similar eligible item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE: A customer purchases a \$35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the \$35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE: A customer purchases a \$35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for a \$35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the \$35 price of the jacket.

(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE: During the exemption period, a customer purchases a \$90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the \$90 dress for a \$150 dress. Tax is due on the \$150 dress. The \$90 credit from the returned item cannot be used to reduce the sales price of the \$150 item to \$60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE: Before the exemption period, a customer purchases a \$60 dress. Later, during the exemption period, the customer exchanges the \$60 dress for a \$95 dress. Tax is not due on the \$95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

220.8(7) *Nonexclusive list of exempt items.* The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

| | | |
|---|--|--|
| Adult diapers | Formal clothing—sold not rented | Raincoats and hats |
| Aerobic clothing | Fur coats and stoles | Religious clothing |
| Antique clothing | Galoshes | Riding pants |
| Aprons—household | Garters and garter belts | Robes |
| Athletic socks | Girdles | Rubber thongs—“flip-flops” |
| Baby bibs | Gloves—cloth, dress and leather | Running shoes without cleats |
| Baby clothes—generally | Golf clothing—caps, dresses, shirts and skirts | Safety shoes (adaptable for street wear) |
| Baby diapers | Graduation caps and gowns—sold not rented | Sandals |
| Baseball caps | Gym suits and uniforms | Shawls |
| Bathing suits | Hats | Shirts |
| Belts with buckles attached | Hiking boots | Shoe inserts and laces |
| Blouses | Hooded (sweat) shirts | Stockings |
| Boots—general purpose | Hosiery, including support hosiery | Suits |
| Bow ties | Jackets | Support hose |
| Bowling shirts | Jeans | Suspenders |
| Bras | Jerseys for other than athletic wear | Sweatshirts |
| Bridal apparel—sold not rented | Jogging apparel | Sweatsuits |
| Camp clothing | Knitted caps or hats | Swim trunks |
| Caps—sports and others | Lab coats | Tennis dresses |
| Chefs’ uniforms | Leather clothing | Tennis skirts |
| Children’s novelty costumes | Leg warmers | Ties |
| Choir robes | Leotards and tights | Tights |
| Clerical garments | Lingerie | Trousers |
| Coats | Men’s formal wear—sold not rented | Tuxedos (except cufflinks)—sold not rented |
| Corsets | Neckwear, e.g., scarves | Underclothes |
| Costumes—Halloween, Santa Claus, etc., sold not rented | Nightgowns and nightshirts | Underpants |
| Coveralls | Overshoes | Undershirts |
| Cowboy boots | Pajamas | Uniforms—generally |
| Diapers—cloth and disposable | Pants | Veils |
| Dresses | Pantyhose | Vests—general, for wear with suits |
| Dress gloves | Prom dresses | Walking shoes |
| Dress shoes | Ponchos | Windbreakers |
| Ear muffs | | Work clothes |
| Employee uniforms other than those primarily designed for athletic activity or protective use | | |

220.8(8) *Nonexclusive list of taxable items.* The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

| | | |
|--|--|--|
| Accessories—generally | Fabric sales | Safety clothing |
| Alterations of clothing | Fishing boots (waders) | Safety glasses |
| Athletic supporters | Football pads | Safety shoes—not adaptable for street wear |
| Backpacks | Football pants | Shoes with cleats or spikes |
| Ballet shoes | Football shoes | Shoulder pads for dresses and jackets |
| Barrettes | Goggles | Shower caps |
| Baseball cleats | Golf gloves | Skates—ice and roller |
| Baseball gloves | Ice skates | Ski boots, masks, suits and vests |
| Belt buckles sold without belts | In-line skates | Special protective clothing or footwear not adaptable for streetwear |
| Belts for weight lifting | Insoles | Sports helmets |
| Belts needing buckles but sold without them | Jewelry | Sunglasses—except prescription |
| Bicycle shoes with cleats | Key cases and chains | Sweatbands—arm, wrist and head |
| Billfolds | Knee pads | Swim fins, masks and goggles |
| Blankets | Laundry services | Tap dance shoes |
| Boutonnieres | Life jackets and vests | Thread |
| Bowling shoes—rented and sold | Luggage | Vests—bulletproof |
| Bracelets | Monogramming services | Weight lifting belts |
| Buttons | Pads—elbow, knee and shoulder, football and hockey | Wrist bands |
| Chest protectors | Patterns | Yard goods |
| Clothing repair | Protective gloves and masks | Yarn |
| Coin purses | Purses | Zippers |
| Corsages | Rental of clothing | |
| Dry cleaning services | Rental of shoes or skates | |
| Elbow pads | Repair of clothing | |
| Employee uniforms primarily designed for athletic activities or protective use | Roller blades | |

This rule is intended to implement Iowa Code section 423.3(68).

701—220.9(423) Sales of diapers.

220.9(1) *In general.* The sales price of diapers, whether cloth or disposable, is exempt from sales tax. This includes children’s diapers and adult diapers.

220.9(2) *Definitions.*

“*Adult diapers*” means diapers other than children’s diapers.

“*Children’s diapers*” means diapers marketed to be worn by children.

“*Diaper*” means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

This rule is intended to implement Iowa Code section 423.3(109).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 221
“Miscellaneous Nontaxable Transactions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1, 423.3, 423.5, and 455C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt a new Chapter 221. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The Department also moved rules from other chapters that fit with the topic of this chapter. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the exemption of miscellaneous nontaxable transactions that do not fit under any other chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any classes of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification on what is taxable and what is exempt.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact of the proposed rules.
 - Qualitative description of impact:

The rules reduce uncertainty about what is taxable and what is exempt. Failing to adopt them would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department of implementing the rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about when exemptions apply.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on exemptions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not seriously consider any alternative methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without these rules would lead to confusion about when exemptions apply.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 221 and adopt the following **new** chapter in lieu thereof:

CHAPTER 221
MISCELLANEOUS NONTAXABLE TRANSACTIONS

701—221.1(423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards) are not sales of tangible personal property and are not sales the sales price of which is subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the sales price at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE: Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of \$200. Customer A purchases a sweater for \$50 from ABC Clothing Company. ABC Clothing Company will debit A's card \$52.50 ($\50×1.05) for the state tax rate of 5 percent or \$53 ($\50×1.06) if one local option tax rate of 1 percent is applicable.

Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

This rule is intended to implement Iowa Code section 423.1(47).

701—221.2(423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

701—221.3(423) Beverage container deposits. Tax does not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C, including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—221.4(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.

221.4(1) In general. A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons, or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property.

To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively referred to herein as "agency") shall act as follows:

- a. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.
- b. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.
- c. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the

property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency's services directly related to the acquisition of personal property.

Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

221.4(2) Scope. The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—221.5(422,423) Films and other media, exempt rental and sale.

221.5(1) Exempt rental. The sales price from the rental of films, video and audio tapes or discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard or read shall not be taxable if the lessee either:

- a. Imposes a charge for the viewing or rental of the media and that charge will be subject to Iowa sales or use tax, or
- b. Broadcasts the contents of the media for public viewing or listening.

The sales price from lessees who are film exhibitors or who rent video tapes and discs would ordinarily be exempt from tax under this rule. The rental of media for reproduction of images into newspapers or periodicals will not be exempt from tax under this rule since neither of criteria "a" or "b" above will occur. The rental of films, video tapes and video discs for home viewing is not exempt from tax.

221.5(2) Exempt sale. Sales price from the sale to persons regularly engaged in the business of leasing or renting media of motion picture films, video and audio tapes or discs, and records, or any other media which can be seen, heard, or read are exempt from tax if the ultimate leasing or renting of the media is subject to Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(41).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 280, 281, and 282
“Receipts Subject to Use Tax Depending on Method of Transaction”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.5(1), 423.6(3), 423.6(6), 423.6(8), 423.6(10), 423.15(5), and 423.17

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 1.413.369.1186
PIN: 243 048 107#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and reserve Chapters 280 and 281 and to rescind and readopt Chapter 282. Chapters 280 and 281 describe the Department’s interpretation of the underlying statutes in order to assist and aid the public’s understanding of what is subject to use tax and what is exempt. Chapter 282 describes the Department’s interpretation of the underlying statutes and provides clarity on how use tax may be imposed depending on the transaction.

After review, the Department has determined that there is no benefit to retaining Chapters 280 and 281 and proposes to rescind and reserve those chapters, but it determined that two rules from Chapter 280 will be repromulgated as rules 701—282.1(423) and 701—282.2(423). Additionally, two rules from Chapter 281 will be repromulgated as rule 701—218.12(423) and new content in rule 701—219.7(423). These two rules are contained within the regulatory analyses for Chapters 218 and 219 and are published herein (11/1/23 IAB). The Department proposes further revisions to Chapter 282 to provide clarification and to remove obsolete, unnecessary, and duplication of statutory language. The Department also renumbered some rules in Chapter 282 due to other edits and for other organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs to the proposed rulemaking beyond those that are imposed by the underlying statutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public will benefit from the proposed rulemaking and the elimination of Chapters 280 and 281. Because those chapters are no longer necessary, their elimination will reduce confusion about the relevance of those rules, and the proposed Chapter 282 provides guidance on the imposition of use tax.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact associated with the proposed rulemaking beyond what is contained in statute.

- Qualitative description of impact:

The proposed rulemaking will reduce uncertainty about the application of use tax because the proposed revisions will add clarity and obsolete and unnecessary language and rules will be eliminated.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department to implement the proposed rulemaking beyond what would otherwise be required to administer the underlying statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the revision of rules and elimination of rules that are no longer necessary or are obsolete will provide clarification to the public, making it less likely that tax will be collected on what is an exempt sale or overcollected on what is a taxable sale.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are no benefits to retaining Chapters 280 and 281. The Department determined that some rules in those chapters would be better suited and more aligned by being placed into other chapters and that the remaining rules in those chapters are no longer necessary or are obsolete. Further, the cost of inaction would be failing to update Chapter 282 to remove unnecessary and obsolete language and language that duplicates statutory language. The benefits of the proposed rulemaking are to eliminate language and rules that could cause confusion about the imposition of use tax on transactions and to amend the remaining rules to provide clarity to the public.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose is to provide guidance about the imposition of use tax. The Department considered the option of not implementing rules and determined that revising and retaining some rules while eliminating others will provide helpful guidance and useful clarification to the public and reduce confusion.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the option of not implementing rules; however, it determined that retaining and revising some rules while eliminating others will provide guidance and clarification to the public beyond what is provided in the underlying statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department determined that retention of revised rules while eliminating other rules will reduce confusion about the imposition of use tax on transactions.

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have substantial impact on small businesses since it does not make any distinctions based on the size of a business and does not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **701—Chapter 280**.

ITEM 2. Rescind and reserve **701—Chapter 281**.

ITEM 3. Rescind 701—Chapter 282 and adopt the following **new** chapter in lieu thereof:

CHAPTER 282

RECEIPTS SUBJECT TO USE TAX DEPENDING ON METHOD OF TRANSACTION

701—282.1(423) Transaction consummated outside this state. Iowa use tax applies to purchases of tangible personal property, specified digital products, and services as described in Iowa Code section 423.5 on which sales tax was not collected. This would most commonly occur if the good or service was purchased from a retailer that does not have nexus with Iowa.

This rule is intended to implement Iowa Code section 423.5(1).

701—282.2(423) Sales by federal government or agencies to consumers. A consumer purchasing tangible personal property, specified digital products, or a taxable enumerated service for use in Iowa from the federal government or any of its agencies is liable for the payment of Iowa use tax and shall report and remit the tax due on a sales and use tax return furnished by the department.

This rule is intended to implement Iowa Code section 423.5(1)“c.”

701—282.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current. Tangible personal property purchased outside the state and consumed in creating power, heat or steam for processing tangible personal property or for generating electric current intended to be sold ultimately at retail is exempt from sales and use tax. If the property purchased to be consumed as fuel in creating power, heat or steam for processing is also used in the heating of the factory or office, ventilation of the building, lighting of the premises or for any use other than that of direct processing, that portion of the property so used is subject to use tax.

When buying tangible personal property, part of which is exempt as fuel under the provisions of the law, from an out-of-state seller registered to collect tax for the state, the purchaser shall furnish to such registered seller a written certificate certifying the cost of the property which is to be used for processing and is, therefore, exempt. The certificate shall also show the cost of the property which is not to be used

in processing and, therefore, taxable in order that the registered seller may properly bill the amount of use tax due.

This rule is intended to implement Iowa Code section 423.6(3)“b.”

701—282.4(423) Taxation of Native Americans.

282.4(1) Definitions.

“*Native Americans*” means all persons who are descendants of and who are members of any recognized tribe.

“*Settlement*” means all lands recognized as a tribal government settlement or reservation within the boundaries of the state of Iowa.

282.4(2) Use tax. Out-of-state purchases made by Native Americans which are purchased for use on a recognized settlement where delivery occurs on a settlement to Native Americans who are members of the tribe located on that settlement are exempt from tax. Out-of-state purchases made by Native Americans where delivery occurs off a recognized settlement are subject to tax even though purchased for use on a recognized settlement.

More information on purchases that may be subject to sales tax is found in rule 701—285.8(423).

This rule is intended to implement Iowa Code section 423.6(6).

701—282.5(423) Property used to manufacture certain vehicles to be leased. Tangible personal property which becomes an integral part of a vehicle as described in Iowa Code section 423.6(8) is exempt from use tax, subject to the limitations provided in Iowa Code section 423.6(8). However, this rule does not exempt the sale of the tangible personal property used from the imposition of sales tax under Iowa Code section 423.2 if that property is otherwise subject to sales tax.

This rule is intended to implement Iowa Code section 423.6(8).

701—282.6(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa. The rental of vehicles, which do not meet the definition of transportation equipment as defined in Iowa Code section 423.15(5), will be sourced for tax purposes as described in Iowa Code section 423.17.

This rule is intended to implement Iowa Code sections 423.15(5) and 423.17.

701—282.7(423) Sales of mobile homes, manufactured housing, and related property and services.

282.7(1) Sales of mobile homes, manufactured housing, and related property and services for one package price. This rule is applicable only to mobile homes and manufactured housing sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home or manufactured housing is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and described in Iowa Code section 435.26, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by rule 701—Chapter 219 which deals with building contracts and building contractors. Sales of manufactured housing in the form of real estate are governed by rule 701—282.8(423).

When a customer purchases a mobile home or manufactured housing from a dealer, the customer often wants the dealer to prepare the mobile home or manufactured housing so that it is ready for the customer to move into it. To render a mobile home or manufactured housing “ready to move into” a dealer may sell, with the home or housing, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home or manufactured house which a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the home or house:

- a. Connect the electricity.
- b. Connect the water.

- c. Connect sewer system lines.
- d. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home or manufactured house and the ground. It gives the home or house an appearance more like a conventional home because it covers up this space.
- e. Build and install steps for a door.
- f. Build a deck.
- g. Do minor repairs.
- h. Install and sell a foundation upon which to place the mobile home or manufactured housing.
- i. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home or manufactured housing. Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home or manufactured housing on a “ready-to-move-into” basis usually sells that home or housing and the services and additional property necessary to render them livable for one “package price.” The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home or manufactured house and appliances) or the services (e.g., electrical installation) which are part of this package price; nor is the dealer’s package price broken down to indicate any of the expenses which are components of the package price either in the dealer’s sales contract or on any sales invoice.

The package price of any one particular mobile home or manufactured house will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the home or house. In many cases, a dealer will contract with a third party to perform the services promised in the dealer’s contract to a customer. For example, the dealer will contract with a third party to hook up the home or house purchaser’s electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home or manufactured house.

In the situation described above, the “purchase price” of a mobile home or manufactured house is the entire package price charged for the home or house, additional personal property for use in and around the home or house, and services performed to render the home or house livable. The entire amount of the package price, reduced by 80 percent, as explained in rule 701—219.7 (423), is used to calculate the amount of use tax due resulting from the sale of the mobile home or manufactured house. No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

282.7(2) Sales of property and rendition of service under separate contract. If the personal property and services listed in subrule 282.7(1) are purchased under separate contract and not as part of one package price with a mobile home or manufactured house, either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the home or house. Because the price of the property or services is not part of the “purchase price” of a home or house, that price will not be reduced by 80 percent as required under rule 701—219.7(423), in computing the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the sales price of the following services sold are subject to Iowa sales tax under Iowa Code section 423.2(6):

- a. Electrical hookup and air conditioning installation (electrical installation).
- b. Water and sewer system hookup (plumbing).
- c. Skirting installation and building and installation of steps and decks (carpentry).
- d. Nearly all “minor repairs” would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes or manufactured housing would be sales of tangible personal property, the sales price is subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home or manufactured housing would not be a service taxable to the home or housing owner since this installation involves “new construction” and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction contractor and would pay sales tax upon any tangible

personal property purchased and used in the construction of the slab. More information is contained in rule 701—Chapter 219.

282.7(3) Dealer purchases of tangible personal property and services for resale. Regardless of whether the tangible personal property and services connected with the purchase of a mobile home or manufactured housing have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer's or other retailer's purchase of the tangible personal property or service for subsequent resale to a mobile home or manufactured housing purchaser is a purchase "for resale" and thus exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.6(10).

701—282.8(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate. Tax is imposed on the use of "manufactured housing" in Iowa.

282.8(1) Definition.

"Manufactured housing" means the same as defined in Iowa Code section 321.1.

282.8(2) Tax treatment of manufactured housing which is similar to the tax treatment of mobile homes:

a. Manufactured housing is subject to Iowa use tax to the extent provided in Iowa Code section 423.6(10) and shall be paid as provided in Iowa Code section 423.26A.

b. The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.

c. The taxation of manufactured housing which is sold in the form of tangible personal property is similar to the taxation of mobile homes which are sold in the form of tangible personal property. More information is contained in rule 701—282.7(423).

282.8(3) Taxable use of manufactured housing in the form of real estate. Unlike mobile homes, the use of which can be taxed only when the homes are in the form of tangible personal property, under certain conditions, the use of manufactured housing in the form of real estate can be subject to tax. If a developer has placed a manufactured home on a foundation in a lot in Iowa and hooked up the necessary utilities and completed the necessary landscaping to convert the home from tangible personal property to realty, the sale of the manufactured home to a user is a taxable use of the home on the user's part.

EXAMPLE: Company A buys land with enough space for 100 lots for manufactured housing and for the streets necessary to provide access to the lots. Company A then buys 100 manufactured houses. It lawfully buys these houses exempt from use tax based on the assertion that they have been purchased for subsequent resale. Company A then develops the land, installing water, sewer and electric lines, placing the manufactured homes on foundations, and otherwise taking steps to convert the homes from tangible personal property to real estate.

Company A then sells the homes on the lots to various customers. Each purchase of a home by a customer is a taxable use of the home on that customer's part, and the customer is obligated to pay the appropriate county treasurer the amount of Iowa use tax due.

a. *Installed purchase price.* When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the "installed purchase price" of the manufactured housing. Installed purchase price means the same as defined in Iowa Code section 423.1(23). Use tax is due on 20 percent of the amount of the installed purchase price.

(1) Included in the installed purchase price. Included within the meaning of "installed purchase price" are amounts charged to a buyer of a manufactured home to build and install a foundation on which to place a home; amounts charged to hook up electric, water, gas, sewer system, and other lines for necessary utilities; amounts charged to sell and install "skirting" as described in subrule 282.7(1); amounts charged to build and install any steps for a door; and amounts separately charged for any appliances or other items which become a part of the housing after installation, e.g., dishwashers and whirlpool tubs.

(2) Exclusions from installed purchase price. Excluded from the meaning of "installed purchase price" is any amount charged for the purchase of land on which to place a manufactured house; any amount charged for landscaping in connection with the installation of a manufactured house; any amount

charged to build and install any deck or similar appurtenance to a manufactured home; and any amounts charged for the sale of furniture or appliances which remain tangible personal property after installation, e.g., furniture, room air conditioners, and refrigerators. This list of inclusions and exclusions is not exclusive. Furthermore, the purchase of furniture or appliances which remain tangible personal property is subject to Iowa sales or use tax.

b. The exemption in favor of taxable services performed on or in connection with new construction as described in Iowa Code section 423.3(37) is not applicable when calculating the amount of any installed purchase price.

This rule is intended to implement Iowa Code section 423.6(10).

**WORKFORCE DEVELOPMENT BOARD
AND WORKFORCE DEVELOPMENT
CENTER ADMINISTRATION
DIVISION[877]**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 877—Chapter 32
“Adult Education and Literacy Programs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 84A.19 as enacted by 2023 Iowa Acts, Senate File 514

State or federal law(s) implemented by the rulemaking: 2023 Iowa Acts, Senate File 514

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11 a.m.

1000 East Grand Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Workforce Development Department (IWD) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Brooke Axiotis
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Phone: 515.725.3700
Email: brooke.axiotis@iwd.iowa.gov

Purpose and Summary

Pursuant to Executive Order 10, this rulemaking reduces restrictive terms and language and duplicative references to the Iowa Code that restate the federal law.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The costs of the proposed rulemaking are administrative costs that would be borne by state and local program administrators.

- Classes of persons that will benefit from the proposed rulemaking:

State and local program administrators will benefit because the rulemaking reduces duplication and administrative burdens.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

This rulemaking would result in a state programmatic cost reduction of approximately \$2,400 per year and a local programmatic cost reduction of approximately \$21,000 per year.

- Qualitative description of impact:

Eliminating an unnecessary, burdensome application process for English as a second language program funds from state sources would reduce local program staff time in compiling data and applications and would reduce state program staff time in evaluating applications.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no anticipated additional enforcement costs that would be borne by IWD or any other agency.
 - Anticipated effect on state revenues:
There is no anticipated impact on state revenues besides a reduction in costs.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Taking action would reduce costs by approximately \$23,400. If no action is taken, then there would be no reduction in costs and efficiencies for state and local staff.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly or intrusive methods. This change is more cost-effective than the current rule.

6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
There were no alternatives seriously considered by IWD since this is the most effective manner to reduce costs and administrative burden for state and local staff.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
This rulemaking is the most cost-effective and efficient way to administer this program.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 877—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32
ADULT EDUCATION AND LITERACY PROGRAMS

877—32.1(260C) Definitions.

“Act” is the Adult Education and Family Literacy Act, 29 U.S.C. Sections 3101 et seq.

“*Adult education and literacy program*” means the same as defined in Iowa Code section 84A.19 as enacted by 2023 Iowa Acts, Senate File 514, as well as other activities specified in the Act.

“*Career pathways*” means the same as defined in 29 U.S.C. Section 3102, subsection 7, with the exception of item (F).

“*Coordinator*” means the person(s) responsible for making decisions for the adult education and literacy program at the local level.

“*Department*” means the Iowa department of workforce development.

“*English as a second language*” means a structured language acquisition program designed to teach English to students whose native language is other than English.

“*Intake*” means admittance and enrollment in an adult education and literacy program operated by an eligible provider.

“*Professional staff*” means all staff that are engaged in providing services, including instruction and data entry, for individuals who are eligible for adult education and literacy programs.

“*State assessment policy*” means a federally approved policy which stipulates the use of a standardized assessment, scoring and reporting protocols, certification requirements for test administrators, and the protocol for tracking test and attendance data.

“*State plan*” means the compliance document that outlines Iowa’s workforce development system four-year strategy for providing workforce services, including adult education and literacy, to Iowans and employers. State planning shall be developed in accordance with applicable federal legislation.

“*Volunteer staff*” means all non-paid persons who perform services, including individualized instruction and data entry, for individuals who are eligible for adult education and literacy programs.

877—32.2(260C) Program administration. The department is designated as the agency for administration of state and federally funded adult basic education programs and for supervision of the administration of adult basic education programs. The department is responsible for the allocation and distribution of state and federal funds awarded to eligible providers for adult basic education programs through a grant application in accordance with this chapter and with the state plan.

32.2(1) Eligible providers. Eligible providers are eligible entities as defined by the Adult Education and Family Literacy Act, 20 U.S.C. Ch. 73, and subsequent federal workforce training and adult education legislation, and approved by the department.

32.2(2) Program components.

a. The eligible provider will maintain the ability to provide the following adult education and literacy services as deemed appropriate by the community or needs of the students:

- (1) Adult basic education;
- (2) Programs for adults who are English learners;
- (3) Adult secondary education, including programs leading to the achievement of a high school equivalency certificate or high school diploma;
- (4) Instructional services provided by qualified instructors as defined in subrule 32.5(1) to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment;
- (5) Assessment and guidance services adhering to the state’s assessment policy; and
- (6) Programs and services stipulated by current and subsequent federal and state adult education legislation.

b. Providers effectively use technology, services, and delivery systems, including distance education, in a manner sufficient to increase the amount and quality of student learning and performance.

c. Providers ensure a student acquires the skills needed to transition to and complete postsecondary education and training programs and obtain and advance in employment leading to economic self-sufficiency.

32.2(3) Local planning.

a. Adult education and literacy programs are to collaborate and enter into agreements with multiple partners in the community for the purpose of establishing a local plan. Such plans are to

expand the services available to adult learners, align with the strategies and goals established by the state plan, and prevent duplication of services.

b. An adult education and literacy program's agreement will not be formalized until the local plan is approved by the department. A plan will be approved if the plan complies with the standards and criteria outlined in this chapter, federal adult education and family literacy legislation, and the strategies and goals of the state plan as defined in the local plan application.

c. Local plans may be approved by the state for single or multiple years.

32.2(4) Federal funding. Federal funds received by an adult education and literacy program are not to be expended for any purpose other than authorized activities pursuant to the Act.

32.2(5) State funding. Moneys received from state funding sources for adult education and literacy programs are to be used in the manner described in this subrule. All funds are to be used to expand services and improve the quality of adult education and literacy programs.

a. Use of funds. State funding may only be expended on:

- (1) Allowable uses pursuant to the Act.
- (2) High school equivalency testing and associated costs.

b. Restrictions. In expending state funding, adult education and literacy programs shall adhere to the allowable use provisions of the Act, except for administrative cost provisions.

c. Reporting. All reporting for state funding will adhere to a summary of financial transactions related to the adult education and literacy program's resources and expenses in a format prescribed by the department. Adult education and literacy programs will submit quarterly reports to the department on dates to be set by the department. A year-end report will be submitted to the department no later than October 1.

32.2(6) English as a second language. In addition to meeting subrules 32.2(1) through 32.2(5), English as a second language programs are to adhere to the following provisions.

a. Distribution and allocation. The department will prescribe the distribution and allocation of funding, based on need for instruction in English as a second language in the region served by each community college, as measured by census data, survey data, and local outreach efforts and results.

b. Midyear reporting. English as a second language programs will include a narrative describing the progress and attainment of benchmarks established by the department. The report is to be provided to the department midway through the academic year.

32.2(7) Funding allocation. The department will be responsible for the allocation and distribution of state and federal funds for adult basic education programs in accordance with these rules and with the state plan. The state has the right under federal legislation to establish the funding formula and to issue a competitive bidding process.

877—32.3(260C) Career pathways. Adult education and literacy programs may use state adult education and literacy education funding for activities related to the development and implementation of the basic skills component of a career pathways system.

32.3(1) Collaboration. Adult education and literacy programs are to coordinate with other available education, training, and social service resources in the community for the development of career pathways, such as by establishing strong links with elementary schools and secondary schools, postsecondary educational institutions, institutions of higher education, local workforce boards, one-stop centers, job training programs, social service agencies, business and industry, labor organizations, community-based organizations, nonprofit organizations, and intermediaries.

32.3(2) Use of state funds. Only activities directly linked to adult education and literacy programs and instruction shall be funded with moneys received from state adult education and literacy funds. Consideration will be given to providing adult education and literacy activities concurrently with workforce preparation activities and workforce training for the purpose of educational and career advancement.

877—32.4(260C) Student eligibility. A person seeking to enroll in an adult education and literacy program is eligible if the person meets the criteria in 29 U.S.C. section 3272(4).

877—32.5(260C) Qualification of staff. This rule applies to all staff hired after July 1, 2015. All staff hired prior to July 1, 2015, are exempt from this rule.

32.5(1) Professional staff. Professional staff providing instruction in an adult education and literacy program to students possess at minimum a bachelor's degree.

32.5(2) Volunteer staff. Volunteer staff possess at minimum a high school diploma or high school equivalency diploma.

877—32.6(260C) High-quality professional development.

32.6(1) Responsibility of program. Adult education and literacy programs are responsible for providing professional development opportunities for professional and volunteer staff pursuant to this rule, including:

a. Proper procedures for the administration and reporting of data pursuant to rule 877—32.7(260C);

b. The development and dissemination of instructional and programmatic practices based on the most rigorous and scientifically valid research available; and

c. Appropriate reading, writing, speaking, mathematics, English language acquisition, distance education, and staff training practices aligned with content standards for adult education.

32.6(2) Professional development. Professional development is to include formal and informal means of assisting professional and volunteer staff to:

a. Acquire knowledge, skills, approaches, and dispositions;

b. Explore new or advanced understandings of content, theory, and resources; and

c. Develop new insights into theory and its application to improve the effectiveness of current practice and lead to professional growth.

32.6(3) Professional development standards. The department and entities providing adult education and literacy programs are to promote effective professional development and foster continuous instructional improvement. Professional development is to incorporate the following standards:

a. Strengthens professional and volunteer staff knowledge and application of content areas, instructional strategies, and assessment strategies based on research;

b. Prepares and supports professional and volunteer staff in creating supportive environments that help adult learners reach realistic goals;

c. Uses data to drive professional development priorities, analyze effectiveness, and help sustain continuous improvement for adult education and literacy programs and learners;

d. Uses a variety of strategies to guide adult education and literacy program improvement and initiatives;

e. Enhances abilities of professional and volunteer staff to evaluate and apply current research, theory, evidence-based practices, and professional wisdom;

f. Models or incorporates theories of adult learning and development; and

g. Fosters adult education and literacy program, community, and state level collaboration.

32.6(4) Provision of professional development. Adult education and literacy program staff are to participate in professional development activities that are related to their job duties and improve the quality of the adult education and literacy program with which the staff is associated. All professional development activities will be in accordance with the published Iowa Adult Education Professional Development Standards.

a. All professional staff are to receive at least 12 clock hours of professional development annually. Professional staff who possess a valid Iowa teacher certificate are exempt from this paragraph.

b. All professional staff new to adult education are to receive six clock hours of preservice professional development prior to, but no later than, one month after starting employment with an adult education program. Preservice professional development may apply toward the professional development described in paragraph 32.6(4)“a.”

c. Volunteer staff are to receive 50 percent of the professional development described in paragraphs 32.6(4)“a” and 32.6(4)“b.”

32.6(5) Individual professional development plan. Adult education and literacy programs are to develop and maintain a plan for hiring and developing quality professional staff that includes all of the following:

- a. An implementation schedule for the plan.
- b. Orientation for new professional staff.
- c. Continuing professional development for professional staff.
- d. Procedures for accurate record keeping and documentation for plan monitoring.
- e. Specific activities to ensure that professional staff attain and demonstrate instructional competencies and knowledge in related adult education and literacy fields.
- f. Procedures for collection and maintenance of records demonstrating that each staff member has attained or documented progress toward attaining minimal competencies.
- g. Provision that all professional staff will be included in the plan. The plan may be differentiated for each type of employee.

32.6(6) Waiver. The time for professional development may be reduced by local adult education and literacy programs in individual cases where exceptional circumstances prevent staff from completing the specified hours of professional development. Documentation is to be kept which justifies the granting of a waiver. Requests for exemption from staff qualification requirements in individual cases will be kept on record and available to the department for review upon request.

32.6(7) Monitoring. Each program will maintain records of staff qualifications and professional development for five years, which will be available to department staff for monitoring upon request.

877—32.7(260C) Performance and accountability.

32.7(1) Accountability system. Adult education and literacy programs shall adhere to the standards established by the Act in the use and administration of the accountability system, as well as this rule. The accountability system will be a statewide system to include enrollment reports, progress indicators and core measures.

32.7(2) Performance indicators.

a. *Compliance.* Adult education and literacy programs will adhere to the policies and procedures outlined in the state assessment policy. Data will be submitted by the tenth day of each month or, should that day fall outside of standard business hours, the first Monday following the tenth day of the month. All adult education and literacy programs will comply with data quality reviews and complete quality data checks to ensure federal compliance with reporting.

b. *Determination of progress.* Upon administration of a standardized assessment, within the first 12 hours of attendance, adult education and literacy programs will place eligible students at an appropriate level of instruction. Progress assessments will be administered after the recommended hours of instruction as published in the state assessment policy.

c. *Core measures.* Federal and state adult education and literacy legislation has established data for reporting core measures, including percentage of participants in unsubsidized employment during the second and fourth quarter after exit from the program; median earnings; percentage of participants who obtain a postsecondary credential or diploma during participation or within one year after exit from the program; participants achieving measurable skill gains; and effectiveness in serving employers.

877—32.8(260C) References. All references to the United States Code (U.S.C.) and Iowa Adult Education Professional Development Standards in this chapter are as amended to November 1, 2023.

These rules are intended to implement Iowa Code chapter 260C.

**WORKFORCE DEVELOPMENT BOARD
AND WORKFORCE DEVELOPMENT
CENTER ADMINISTRATION
DIVISION[877]**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 877—Chapter 33
“Iowa Vocational Rehabilitation Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 84G as enacted by 2023 Iowa Acts, Senate File 514

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 84G as enacted by 2023 Iowa Acts, Senate File 514

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
12 noon

1000 East Grand Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Workforce Development Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Brooke Axiotis
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: brooke.axiotis@iwd.iowa.gov

Purpose and Summary

The purpose of the proposed changes is to remove references to the Department of Education and replace them with references to the Iowa Department of Workforce Development. In addition, where possible, definitions are proposed to be replaced with the definitions in, or references to, 34 CFR Part 361.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
These changes will not affect any class from a cost standpoint.
 - Classes of persons that will benefit from the proposed rulemaking:
This is a basic cleanup of rules that will clarify who owns the rules and what defined terms mean.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
This is a basic cleanup of rules with no quantitative impact.
 - Qualitative description of impact:
This is a basic cleanup of rules with no qualitative impact.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
This is a basic cleanup of rules, and there is no cost to the State.

- Anticipated effect on state revenues:

This is a basic cleanup, and there is no effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This is a basic cleanup of rules.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

This is a basic cleanup of rules.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative method was considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rules do not have an impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 877—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33 IOWA VOCATIONAL REHABILITATION SERVICES

877—33.1(84G,90GA,SF514) Nature and responsibility of division. The division of vocational rehabilitation services is established in the department of workforce development and is responsible for providing services to potentially eligible and eligible individuals with disabilities leading to competitive integrated employment in accordance with Iowa Code chapter 259, the federal Rehabilitation Act of 1973, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations.

877—33.2(84G,90GA,SF514) Nondiscrimination. The division shall not discriminate on the basis of age, race, creed, color, gender, sexual orientation, gender identity, national origin, religion, duration of

residency, or disability in the determination of a person's eligibility for rehabilitation services and in the provision of necessary rehabilitation services.

877—33.3(84G,90GA,SF514) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

“Act” means the federal Rehabilitation Act of 1973 as codified at 29 U.S.C. Section 701, et seq.

“Aggregate data” means information about one or more aspects of division job candidates, or from some specific subgroup of division job candidates, but from which personally identifiable information on any individual cannot be discerned.

“Applicant” means an individual or the individual's representative, as appropriate, who has completed the IVRS Application for Services (R-412), a common intake application form through a one-stop center requesting IVRS services, or has otherwise requested services from IVRS; has provided to IVRS information necessary to initiate an assessment to determine eligibility and priority for services; is available to complete the assessment process; and has reviewed and signed the Rights and Responsibilities (IPE-1).

“Appropriate modes of communication” has the meaning given in 34 CFR Section 361.5(4).

“Assessment for determining eligibility or in the development of an IPE” means a review of existing data and, to the extent necessary, the provision of appropriate assessment activities to obtain additional information to make a determination and to assign the priority for services or development of an IPE.

“Assistive technology device” means the same as defined in Section 3 of the Assistive Technology Act of 1998.

“Assistive technology service” means the same as defined in Section 3 of the Assistive Technology Act of 1998.

“Benefits planning” means assistance provided to an individual who is interested in becoming employed, but is uncertain of the impact work income may have on any disability benefits and entitlements being received, and is or is not aware of benefits, such as access to health care, that might be available to support employment efforts.

“Case record” means the file of personally identifiable information, whether written or electronic in form, on an individual that is collected to carry out the purposes of the division as defined in the Act. This information remains a part of the case record and is subject to these rules even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

“Community rehabilitation program” or *“CRP”* has the meaning given in 34 CFR Section 361.5(7).

“Comparable services and benefits” has the meaning given in 34 CFR Section 361.5(8).

“Competitive integrated employment” has the meaning given in 34 CFR Section 361.5(9).

“Competitive integrated work setting,” with respect to the provision of services, means a setting, typically found in the community, in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, and said interaction is consistent with the quality of interaction that would normally occur in the performance of work by the nondisabled coworkers.

“Customized employment” has the meaning given in 34 CFR Section 361.5(11).

“Department” means the department of workforce development.

“Designated representative” means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the designated representative.

“Designated state unit” or *“DSU”* means Iowa vocational rehabilitation services.

“Division” or *“IVRS”* means Iowa vocational rehabilitation services.

“Eligible individual” means an applicant for services from the division who meets the eligibility requirements.

“Employment outcome” has the meaning given in 34 CFR Section 361.5(15).

“Extended employment” has the meaning given in 34 CFR Section 361.5(18).

“Extended services” has the meaning given in 34 CFR Section 361.5(19).

“Family income,” for purposes of calculating the financial participation rate for services, means those who are financially responsible for the support of the job candidate and may involve individuals who live in the same or separate households including partners and spouses.

“Family member,” for purposes of vocational rehabilitation services, means any individual who lives with the individual with a disability and has a vested interest in the welfare of that individual whether by marriage, birth, or choice. A family member is an individual who either (1) is a relative or guardian of an applicant or job candidate, or (2) lives in the same household as an applicant or job candidate, who has a substantial interest in the well-being of the applicant or job candidate, and whose receipt of vocational rehabilitation services is necessary to enable the applicant or job candidate to achieve an employment outcome.

“IDEA” means the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

“Impartial hearing officer” or *“IHO”* has the meaning given in 34 CFR Section 361.5(24).

“Independent living services” or *“IL services”* means services authorized under Title VII, Chapter 1, Part B of the Rehabilitation Act of 1973.

“Individualized plan for employment” or *“IPE”* means a plan that specifies the services needed by an eligible individual and the responsibilities of the individual with a disability and other payers. An IPE contains the matter set forth in or permitted by 34 CFR Section 361.46.

“Individual with a disability” has the meaning given in 34 CFR Section 361.5(28).

“Individual with a most significant disability” has the meaning given in 34 CFR Section 361.5(29).

“Individual with a significant disability” has the meaning given in 34 CFR Section 361.5(30).

“Institution of higher education” or *“IHE”* means the same as defined in Section 102(a) of the Higher Education Act of 1965.

“Job candidate” means an applicant or eligible individual applying for or receiving benefits or services from any part of the division and includes former job candidates of the division whose files or records are retained by the division.

“Job retention waiting list release” means the mechanism used to remove a job candidate from the division waiting list when the individual is at immediate risk of losing the job and requires vocational rehabilitation service(s) or good(s) in order to maintain employment. This applies only for those service(s) or good(s) that will allow the individual to maintain employment. After the individual receives said service(s) or good(s), the individual’s file will be closed if the individual is satisfied with the services provided and requires no further services. If there are additional services needed, the individual will return to the waiting list, if necessary, until that point where the individual’s priority of service is being served.

“Maintenance” has the meaning given in 34 CFR Section 361.5(34).

“Mediation” has the meaning given in 34 CFR Section 361.5(35).

“Menu of services” means the services provided by community partners to assist an individual with a disability in achieving an employment outcome. Menu of services refers to various services that the division is able to purchase from an approved CRP or other approved provider on behalf of a job candidate. The services are selected and jointly agreed upon by the counselor and job candidate of the division. Payments for services are made based on a fee structure that is published and updated annually, and there is no financial needs assessment applied toward the costs of these purchased services from the community partner.

“Ongoing support services” has the meaning given in 34 CFR Section 361.5(37).

“Personal assistance services” has the meaning given in 34 CFR Section 361.5(38).

“Physical or mental impairment” has the meaning given in 34 CFR Section 361.5(40).

“Physical or mental restoration services” has the meaning given in 34 CFR Section 361.5(39).

“Plan for natural supports” means a plan initiated prior to the implementation of the supported employment program that describes the natural supports to be used on the job; the training provided to the supervisor and mentor on the job site; the technology used in the performance of the work; the rehabilitation strategies and trainings that will be taught to the mentor in order to support and direct the job candidate on the job; the supports needed outside of work for the job candidate to be successful; and

the methods by which the employer can connect with the job candidate's job coach/IVRS staff member, or the training program when the need arises.

"Postemployment services" has the meaning given in 34 CFR Section 361.5(41).

"Potentially eligible" for the purposes of preemployment transition services means all students with disabilities. A student is considered potentially eligible until the student has applied for services and an eligibility decision has been determined.

"Preemployment transition services" or *"pre-ETS"* means those services specified in 34 CFR Section 361.48(a).

"Recognized educational program" includes secondary education programs, nontraditional or alternative secondary education programs (including homeschooling), postsecondary education programs, and other recognized educational programs such as those offered through the juvenile justice system.

"Rehabilitation technology" has the meaning given in 34 CFR Section 361.5(45).

"Satisfactory employment" means stable employment in a competitive integrated employment setting that is consistent with the individual's IPE and acceptable to both the individual and the employer.

"Self-employment services" means services to assist individuals with disabilities to achieve a self-employment outcome consistent with the individual's abilities, preferences and needs. Self-employment is a vocational option through the division that is available only to for-profit businesses intended for operation within the state of Iowa. The division provides two options within the program, which include the full self-employment program and micro-enterprise development. These services provide information, strategies and resources to help the business become self-sustaining while assisting the individual in assuring all necessary supports are in place for long-term success.

"Status" means the existing condition or position of a case. The specific case statuses are as follows:

1. 00-0 Referral for services.
2. 01-0 Potentially eligible student.
3. 01-1 Closed from potentially eligible.
4. 02-0 Applicant.
5. 04-0 Waiting list.
6. 08-0 Closed before acceptance (from Status 02-0).
7. 10-0 Accepted for services (plan development) adults.
8. 10-1 Accepted for services (plan development) high school students.
9. 14-0 Counseling and guidance.
10. 16-0 Physical and mental restoration.
11. 18-__ Training.
 - 18-1 Work adjustment training/assessment.
 - 18-2 On-the-job training.
 - 18-3 Vocational-technical training.
 - 18-4 Academic training.
 - 18-5 Secondary education.
 - 18-6 Supported employment.
 - 18-7 Other types of training (including nonsupported employment job coaching, job development, ISE).
12. 20-0 Ready for employment.
13. 22-0 Employed.
14. 24-0 Services interrupted.
15. 26-0 Closed rehabilitated.
16. 28-0 Closed after IPE initiated (from Status 14-0 through 24-0).
17. 30-0 Closed before IPE initiated (from Status 10-__).
18. 32-0 Postemployment services (from Status 26-0).
19. 33-__ Closed after postemployment services (from Status 32-0).
 - 33-1 Individual is returned to suitable employment or the employment situation is stabilized.

- 33-2 The case has been reopened for comprehensive vocational rehabilitation services.
- 33-3 The postemployment services are no longer assisting the individual and further services would be of no assistance.

20. 38-0 Closed from Status 04-0 (individual does not meet one of the waiting list categories, and the individual no longer wants to remain on the waiting list or fails to respond when contacted because individual's name is at the top of the waiting list).

"Student with a disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program who is not younger than 14 years of age and not older than 21 years of age; and is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act or is a student who is an individual with a disability, for purposes of Section 504.

"Substantial impediment to employment" has the meaning given in 34 CFR Section 361.5(52).

"Supported employment" has the meaning given in 34 CFR Section 361.5(53).

"Supported employment services" has the meaning given in 34 CFR Section 361.5(54).

"Transition services" has the meaning given in 34 CFR Section 361.5(55).

"Transportation" has the meaning given in 34 CFR Section 361.5(56).

"Vocational rehabilitation services" has the meaning given in 34 CFR Section 361.5(57).

"Waiting list" means the listings of eligible individuals for vocational rehabilitation services who are not in a category being served, otherwise known as "order of selection" under the Workforce Innovation and Opportunity Act of 2014.

"Youth with a disability" has the meaning given in 34 CFR Section 361.5(58).

877—33.4(84G,90GA,SF514) Referral and application for services.

33.4(1) General.

a. The division has established and implemented standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the one-stop service delivery systems under Section 121 of the Workforce Innovation and Opportunity Act. The standards include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

b. A referral for a student with a disability requesting preemployment transition services (pre-ETS) includes completion of the pre-ETS agreement.

c. Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under Section 121 of the Workforce Innovation and Opportunity Act, an eligibility determination is to be made within 60 days, unless exceptional and unforeseen circumstances beyond the control of the division preclude making an eligibility determination within 60 days and the division and the individual agree to a specific extension of time.

d. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, has completed an agency application form including written consent; has completed a common intake application form in a one-stop center requesting vocational rehabilitation services or has otherwise requested services from the division; has provided to the division information necessary to initiate an assessment to determine eligibility and priority for services; and is available to complete the assessment process. The division ensures that its application forms are widely available throughout the state, particularly in the one-stop centers under Section 121 of the Workforce Innovation and Opportunity Act.

e. The division will refer applicants or eligible individuals to appropriate programs and service providers best suited to address the specific rehabilitation, independent living and employment needs of the individual with a disability. Individuals with the most significant disabilities who are working at subminimum wage in a nonintegrated setting are provided information about competitive integrated employment and support from the division, once known to the division, by qualified personnel and partners with the goal of assisting said individuals to pursue competitive integrated employment.

f. The division will inform those who decide against pursuit of employment that services may be requested at a later date if, at that time, they choose to pursue an employment outcome.

33.4(2) *Individuals who are blind.* Pursuant to rule 111—10.4(216B), individuals who meet the department for the blind (IDB) definition of “blind” are to be served primarily by IDB. Joint cases are served pursuant to any applicable memorandum of agreement executed between the division and IDB.

877—33.5(84G,90GA,SF514) Eligibility for vocational rehabilitation services.

33.5(1) *General.*

a. Eligibility for vocational rehabilitation services will be determined upon the basis of the following:

(1) A determination by a qualified rehabilitation counselor that the applicant has a physical or mental impairment documented by a qualified provider;

(2) A determination by a qualified rehabilitation counselor that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and

(3) A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

b. For purposes of an assessment for determining eligibility and vocational rehabilitation needs, an individual is presumed to have a goal of an employment outcome. The applicant’s completion of the application process for vocational rehabilitation services is sufficient evidence of the individual’s intent to achieve an employment outcome. If at any time the individual decides to no longer pursue competitive integrated employment, the individual is no longer eligible for division services.

33.5(2) *Presumptions.* A presumption exists that the applicant who meets the eligibility provisions in subparagraphs 56.5(1) “a”(1) and 56.5(1) “a”(2) can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. Any applicant who has been determined eligible for social security benefits under Title II or Title XVI of the Social Security Act based on the applicant’s own disability is presumed eligible for vocational rehabilitation services and is considered an individual with a significant disability. IVRS staff are to verify the applicant’s eligibility. Recipients who demonstrate eligibility under subrule 56.6(1) are to also demonstrate need in the individualized plan for employment (IPE) under subrule 56.6(3). Nothing in this rule automatically entitles a recipient of social security disability insurance or supplemental security income payments to any good or service provided by the division. Qualified IVRS personnel will identify and document the individual as a recipient of social security benefits based on disability, and the determination of impediments to employment and need for services will be documented by the qualified rehabilitation counselor.

33.5(3) *Standards for ineligibility.* If the division determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an IPE is no longer eligible for services, including preemployment transition services (pre-ETS), the division will comply with 34 CFR Section 361.43.

33.5(4) *Residency.* There is no duration of residency requirement; however, an individual seeking services from the agency must be present and available for participation in services.

877—33.6(84G,90GA,SF514) Other eligibility and service determinations.

33.6(1) *Waiting list.*

a. As set forth in the Act and 34 CFR Section 361.36, if the division cannot serve all eligible individuals who apply, the division shall develop and maintain a waiting list for services based on significance of disability. The three categories of waiting lists are as follows, listed in order of priority to be served:

(1) Most significantly disabled;

(2) Significantly disabled; and

(3) Others eligible.

b. An individual's order of selection is determined by the waiting list and the date on which the individual applied for services from IVRS. All waiting lists are statewide in scope; no regional lists are to be maintained. Assessment of the significance of an applicant's disability is done during the process of determining eligibility but may continue after the individual has been placed on a waiting list. Individuals who do not meet the order of selection criteria will have access to services provided through information and referral. The division will provide the individual:

- (1) A notice of the referral;
- (2) Information identifying a specific point of contact at the agency to which the individual is referred; and
- (3) Information and advice on the referral regarding the most suitable services to assist the individual.

c. Job retention services are available for those individuals who meet the requirements for those services.

33.6(2) Options for individualized plan for employment (IPE) development.

a. The division provides information on the available options for developing the IPE, including the option that an eligible individual, or as appropriate, the individual's representative, may develop all or part of the IPE without assistance from the division or other entity; or with assistance from:

- (1) A qualified vocational rehabilitation counselor employed by IVRS;
- (2) A qualified vocational rehabilitation counselor not employed by IVRS;
- (3) A disability advocacy organization, such as the CAP or Disability Rights Iowa (DRI), or any other advocacy organization of the individual's choosing; or
- (4) Resources other than those mentioned above, such as the individual's case manager or a representative of the division under the guidance of a division vocational rehabilitation counselor.

b. The IPE is not approved or put into practice until it is discussed and reviewed; amended, if applicable; and approved by the job candidate and the vocational rehabilitation counselor employed by the division.

c. There is no compensation for any expenses incurred while the IPE is developed with any entity not employed by the division.

d. If the job candidate is not on the division waiting list and needs some assessment services to develop the IPE, the job candidate is to discuss the needs in advance with the division counselor and obtain prior approval if financial assistance is needed from the division to pay for the assessment service.

e. For individuals entitled to benefits under Title II or XVI of the Social Security Act on the basis of a disability or blindness, the division must provide to the individual general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning.

f. The job candidate's signature on the IPE verifies the ticket assignment to the division unless otherwise directed by the job candidate.

g. The IPE implementation date begins on the date of the division counselor's signature.

33.6(3) Content of the individualized plan for employment (IPE). Each IPE will contain the content specified in 34 CFR Section 361.46.

No expenditures associated with the job candidate-developed plan are the responsibility of IVRS, unless agreed to and approved by the IVRS counselor. Written approval for services must be obtained prior to any IVRS financial obligation.

All IPE services are provided, unless amended and determined unnecessary. The division exercises its discretion in relation to the termination or amendment of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed.

33.6(4) Scope of services.

a. Preemployment transition services (pre-ETS). In collaboration with the local educational agencies involved, the division ensures that pre-ETS are arranged and available to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services, as defined in 34 CFR Section 361.5(c)(51). Pre-ETS include:

- (1) Required activities. The division is to provide the following activities:

1. Job exploration counseling;
2. Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;
3. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
4. Workplace readiness training to develop social skills and independent living; and
5. Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(2) Authorized activities. Funds available and remaining after the provision of the required activities may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by:

1. Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;
2. Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;
3. Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;
4. Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this rule;
5. Coordinating activities with transition services provided by local educational agencies under the IDEA;
6. Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel in order to better achieve the goals of this rule;
7. Developing model transition demonstration projects;
8. Establishing or supporting multistate or regional partnerships involving states, local educational agencies, designated state units, developmental disability agencies, private businesses, or other participants to achieve the goals of this rule; and
9. Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

(3) Preemployment transition coordination. Each local office of a designated state unit must carry out responsibilities consisting of:

1. Attending individualized education program meetings for students with disabilities, when invited;
2. Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;
3. Working with schools, including those carrying out activities under Section 614(d) of the IDEA, to coordinate and ensure the provision of preemployment transition services under this rule;
4. When invited, attending person-centered planning meetings for individuals receiving services under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.).

(4) Completion of the pre-ETS agreement outlines the agreed-upon preemployment transition services needed by the student with a disability. When it is necessary to purchase these services, written prior approval must be obtained from the division.

Once an individual applies for services, the division may provide certain services (e.g., assessments for the determination of eligibility and plan development). The preemployment transition services listed above may continue for students with disabilities (as applicable).

b. Vocational services for eligible individuals not on a waiting list are services described in an IPE and are necessary to assist the eligible individual in preparing for, obtaining, retaining, regaining, or advancing in employment if the failure to advance is due to the disability, consistent with informed

choice. Funding for such services is provided in accordance with the division policies. The services include:

- (1) Assessment for determining services needed to achieve competitive integrated employment;
- (2) Counseling and guidance, which means career counseling to provide information and support services to assist the eligible individual in making informed choices;
- (3) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system, and through agreements with other organizations and agencies as well as advising individuals about the client assistance program;
- (4) Job-related services to facilitate the preparation for, obtaining of, and retaining of employment to include job search, job development, job placement assistance, job retention services, follow-up services and follow-along if necessary and required under the IPE;
- (5) Vocational and other training services, including personal and vocational adjustment training; advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business; books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with IVRS funds unless maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training, in accordance with the definition of that term in 34 CFR Section 361.48(b)(6);
- (6) Physical and mental treatment may be provided to the extent that financial support is not readily available from another source other than IVRS, such as health insurance of the individual or a comparable service or benefit, as defined in 34 CFR Section 361.5(c)(39), and said treatment is essential to the progression of the individual to achieve the competitive integrated employment outcome according to the following provisions:
 1. The service is necessary for the job candidate's satisfactory occupational adjustment;
 2. The condition causing the disability is relatively stable or slowly progressive;
 3. The condition is of a nature that treatment may be expected to remove, arrest, or substantially reduce the disability within a reasonable length of time;
 4. The prognosis for life and employability is favorable.
- (7) Maintenance services as defined in 34 CFR Section 361.5(c)(34), to the extent that the costs of maintenance shall not exceed the amount of increased expenses that the rehabilitation causes for the job candidate or the job candidate's family. Maintenance is not intended to provide relief from poverty or abject living conditions. Guidance regarding the financial support of maintenance is available from the division's policy manual;
- (8) Transportation in connection with the provision of any vocational rehabilitation service and as defined in 34 CFR Section 361.5(c)(57), to the extent that when necessary to enable an applicant or a job candidate to participate in or receive the benefits of other vocational rehabilitation services, travel and related expenses, including expenses for training in the use of public transportation vehicles and systems, may be provided by the division. Transportation services may include the use of private or commercial conveyances (such as private automobile or van, public taxi, bus, ambulance, train, or plane) or the use of public transportation and coordination with a regional transit agency;
- (9) Vocational rehabilitation services to family members, as defined in 34 CFR Section 361.5(c)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome;
- (10) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services;
- (11) Supported employment services as defined in 34 CFR Section 361.5(c)(42);
- (12) Occupational licenses, tools, equipment, initial stocks and supplies;
- (13) Rehabilitation technology as defined in 34 CFR Section 361.5(c)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices;

(14) Transition services for a student or youth with a disability that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment, or preemployment transition services for students;

(15) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(16) Customized employment as defined in 34 CFR Section 361.5(c)(11); and

(17) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

33.6(5) *Specific services requiring financial assessment.*

a. Financial need must be established prior to the provision of certain services at the division's expense and is evidenced by use of the financial inventory needs tool utilized by the division. No financial needs test will occur for the following services:

(1) Assessment for eligibility and priority of services and determining vocational rehabilitation needs under 34 CFR Section 361.48(b)(2);

(2) Vocational rehabilitation counseling and guidance under 34 CFR Section 361.48(b)(3);

(3) Referral and other services under 34 CFR Section 361.48(b)(4);

(4) Job-related services under 34 CFR Section 361.48(b)(12);

(5) Personal assistance services under 34 CFR Section 361.48(b)(14); and

(6) Any auxiliary aid or service (e.g., interpreter services under 34 CFR Section 361.48(b)(10) or reader services under 34 CFR Section 361.48(b)(11)) that an individual with a disability requires.

b. Recipients of SSDI/SSI and foster care youth are not subject to a financial needs test but must demonstrate eligibility under subrule 56.6(1) and rule 281—56.5(259), as well as demonstrate need in the IPE.

(1) For the determination of financial need, the individual and the individual's family (when applicable) are required to provide information regarding all family income from any source that may be applied toward the cost of rehabilitation services, other than those services mentioned above, where the financial needs test does not apply. Family is considered to be any individuals who are financially responsible for the support of the job candidate, regardless of whether they reside in the same or separate households. A comparable services and benefits search is required for some services. The division shall not pay for more than the balance of the cost of services minus comparable services and benefits for the individual's documented contribution. When an individual refuses to supply information for the financial needs test, the individual assumes 100 percent responsibility for the costs of the rehabilitation.

(2) The division shall observe the following policies in deciding financial need based upon the findings:

1. All services requiring the determination of financial need are provided on the basis of supplementing the resources of the individual or of those responsible for the individual.

2. A division supervisor may grant an exception in cases where the individual's disability caused, or is directly related to, financial need and where all other sources of money have been exhausted by the individual and the guardian of the individual (when applicable).

3. Consideration will be given to the individual's responsibility for the immediate needs and maintenance of the individual's dependents, and the individual is expected to reserve sufficient funds to meet the individual's family obligations and to provide for the family's future care, education and medical expenses.

4. Income up to a reasonable amount should be considered and determined based on the federal poverty guidelines associated with family size, income, and exclusions.

5. General assistance from state or federal sources is disregarded as a resource unless the assistance is a grant award for postsecondary training.

6. Grants and scholarships based on merit, while not required to be searched for as a comparable benefit, may be considered as part of the determination of financial support of a plan when a request is

beyond the basic support for college. Public grants and institutional grants or scholarships not based on merit are considered a considerable benefit.

7. The division does not fund services for which another entity is responsible.

8. The division seeks and purchases the most economical goods (items/models) or services that meet the individual's vocational needs.

9. Goods and services are only authorized to those facilities and entities qualified and equipped to provide such goods and services.

33.6(6) *Maximum rates of payment to training facilities.* In no case shall the amount paid to a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid to the facility is not to exceed the amount paid to the facility by other public agencies for similar services. The division will maintain information necessary to justify the rates of payment made to training facilities.

33.6(7) *Areas in which exceptions are unavailable.* Pursuant to federal law, an exception will not be granted for any requirements that do not allow for such an exception (e.g., eligibility, mandatory contents of the individualized plan for employment).

33.6(8) *Exceptions to duration of services.* As required by the Act and 34 CFR Section 361.50(d), the division will have a method of allowing for exceptions to its rules regarding the duration of services. In order to exceed the duration of service as defined in the IPE, a job candidate must follow through on the agreed-upon IPE and related activities and keep the division informed of the job candidate's progress.

877—33.7(84G,90GA,SF514) Purchasing principles for individual-specific purposes.

33.7(1) The division will follow the administrative rules for purchasing goods and services promulgated by the department of administrative services.

33.7(2) The division shall purchase only those items or models that allow for a job candidate to meet the job candidate's vocational objective. The division shall not pay for additional features that exceed the requirements to meet a job candidate's vocational objective or that serve primarily to enhance the job candidate's personal life.

33.7(3) The division shall seek out and purchase the most economical item or model that meets the job candidate's vocational needs.

33.7(4) The division shall encourage all job candidates to develop strategies and savings programs to pay for replacement items/models or upgrades.

33.7(5) Items purchased for a job candidate become the property of the job candidate but may be repossessed by the division, subject to reimbursement to the job candidate for the job candidate's share of the purchase price, if the job candidate does not attain employment prior to case closure.

33.7(6) The division shall inform the job candidate that any change to planned purchases must be discussed and approved jointly before a purchase is made.

33.7(7) The division will not participate in the modification to property not owned by the job candidate or the job candidate's family without a division-approved exception to policy.

33.7(8) When considering what item or model to purchase for a specific job candidate, the division shall in all cases consider the following factors:

a. Whether the item or model is required for the job candidate to be able to perform the essential functions of the job candidate's job.

b. Whether other parties or entities may be responsible for providing or contributing to the costs of an item.

877—33.8(84G,90GA,SF514) Review, mediation and appeal processes. At all times throughout the rehabilitation process, individuals accessing any IVRS services shall be informed of the right to appeal or mediation and the procedures by which to file. If an individual is dissatisfied with any agency decision that directly affects the individual, the individual or designated representative may appeal that decision or request mediation. The term "appellant" shall be used to indicate the individual or designated representative who initiates an appeal. The appellant may initiate the appeal process either by calling a counselor or supervisor or by filing the appropriate division appeal form, available from

any counselor or supervisor of the division. If the appeal process or mediation is initiated by telephone, the counselor or supervisor who received the call is to complete the appeal form to the best of that person's ability with information from the appellant. The division shall accept as an appeal or request for mediation a written letter, facsimile, or electronic mail that indicates that the applicant or job candidate desires to appeal or seek mediation. An appeal or mediation request must be filed within 90 days of notification of the disputed decision. Once the appeal form or request for mediation has been filed with the division administrator, a hearing is to be held before an impartial hearing officer (IHO) or mediator within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension or one of the parties declines mediation. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation. The appellant may request assistance with an appeal or mediation from the Iowa client assistance program (ICAP) at any time in the appeal process.

33.8(1) Supervisor review. As a first step, the appellant shall be advised that a supervisor review of the counselor's decision may be requested by notifying the counselor or supervisor in person, by telephone or by letter of the decision to appeal. If the supervisor has been involved in decisions in the case to the extent that the supervisor cannot render a fair and impartial decision or if the supervisor is not available to complete the review in a timely manner, the appeal and case file shall be forwarded to the bureau chief for review. The appellant is not required to request supervisor review as a prerequisite for appeal before an IHO; however, if a supervisor review is requested, the following steps shall be observed:

a. Upon receipt of a request for supervisor review, the supervisor shall notify all appropriate parties of the date and nature of the appeal; examine case file documentation; discuss the issues and reasons for the decision with the immediate counselor and other counselors who may have been previously involved with the case or issue; and, if necessary, meet with any or all parties to discuss the dispute.

b. The supervisor shall have ten working days from receipt of the request for supervisor review to decide the issue and notify the appellant in writing. A copy of the supervisor's decision shall be sent to all appropriate parties.

c. If the supervisor's decision is adverse to the appellant, the copy of the written decision given to the appellant shall include further appeal procedures, including notification that the appellant has ten days from the date of the letter to file further appeal.

d. As an alternative to, but not to the exclusion of, filing for further appeal, the appellant may request mediation of the supervisor's decision or review by the chief of the rehabilitation services bureau.

33.8(2) Mediation. Regardless of whether a supervisor review is requested, an appellant may use the mediation procedures set forth in 34 CFR Section 361.57(d).

33.8(3) Hearing before an impartial hearing officer. Regardless of whether the appellant has used supervisor review or mediation or both, if the appellant requests a hearing before an IHO, the following provisions apply:

a. The division shall appoint the IHO from the pool of impartial hearing officers with whom the division has contracts. The IHO shall be assigned on a random basis or by agreement between the administrator of the division and the appellant.

b. The hearing shall be held within 20 days of the receipt of the appointment of the IHO. A written decision shall be rendered and given to the parties by the IHO within 30 days after completion of the hearing. Either or both of these time frames may be extended by mutual agreement of the parties or by a showing of good cause by one party.

c. The appellant shall be informed that the filing of an appeal confers consent for the release of the case file information to the IHO. The IHO shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.

d. Within five working days after appointment, the IHO shall notify both parties in writing of the following:

- (1) The role of the IHO;
- (2) The IHO's understanding of the reasons for the appeal and the requested resolution;
- (3) The date, time, and place for the hearing, which shall be accessible and located as advantageously as possible for both parties but more so for the appellant;

- (4) The availability of the case file for review and copying in a vocational rehabilitation office prior to the hearing and how to arrange for the same;
- (5) That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;
- (6) That the appellant may present evidence and information personally, may call witnesses, may be represented by counsel or other appropriate advocate at the appellant's expense, and may examine all witnesses and other relevant sources of information and evidence;
- (7) The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;
- (8) Information about the amount of time it will take to complete the hearing process;
- (9) The possibility of reimbursement of necessary travel and related expenses; and
- (10) The availability of interpreter and reader services for appellants not proficient in the English language and those who are deaf or hard of hearing and the availability of transportation or attendant services for those appellants requiring such assistance.

e. Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending the decision of the IHO, unless so requested by the appellant.

f. The IHO shall provide a full written decision, including the findings of fact and grounds for the decision. The appellant or the division may request administrative review, and the IHO decision is submitted to the administrator of the division. Both parties may provide additional evidence not heard at the hearing for consideration for the administrative review. If no additional evidence is presented, the IHO decision stands. Unless either party chooses to seek judicial review pursuant to Iowa Code chapter 17A, the decision of the IHO is final. If judicial review is sought after administrative review, the IHO's decision shall be implemented pending the outcome of the judicial review.

877—33.9(84G,90GA,SF514) Case record. The division has the authority to collect and maintain records on individuals under the Act, the state plan for vocational rehabilitation services, and the Social Security Act. Under this authority, the division maintains a record for each case. The case record contains pertinent case information as defined in division policy including, as a minimum, the basis for determination of eligibility, the basis justifying the plan of services and the reason for closing the case, together with a justification of the closure and supporting documents. Case information is contained in the agency's case management system and a hard copy file. A combination of these data collections instruments constitutes the official case record. The hard copy files are retained for a minimum of four years, but there are instances when a case may be stored longer based on the services received.

877—33.10(84G,90GA,SF514) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the division by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

33.10(1) Personnel records. Personnel records contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances.

33.10(2) Job candidate case records. An individual file is maintained for each person who has been referred to or has applied for the services of the division, as described in rule 877—33.9(84G,90GA,SF514). The file contains a variety of personal information about the job candidate, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential.

33.10(3) Job candidate service record computer database. The job candidate service record computer database contains personal data items about individual job candidates. Data identifying a job candidate is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

33.10(4) Vendor purchase records. Vendor purchase records are records of purchases of goods or services made for the benefit of job candidates. If a record contains the job candidate's name or other

personal identifiers, the record is confidential. Lists of non-job candidate vendors, services purchased, and the costs of those services are not confidential when retrieved from a data processing system without personally identifiable information.

33.10(5) *Records and transcripts of hearings or client appeals.* Records and transcripts of hearings or client appeals contain personally identifiable information about a client's case, appeal from or for some action, and the decision that has been rendered. The personally identifiable information is confidential. Some of the information is maintained in an index provided for in Iowa Code section 17A.3(1) "d." Information is available after confidential personally identifiable information is deleted.

33.10(6) *All computer databases of client and applicant names and other identifiers.* The data processing system contains client status records organized by a variety of personal identifiers. These records are confidential as long as any personally identifiable information is present.

33.10(7) *All computer-generated reports that contain personally identifiable information.* The division may choose to draw or generate from a data processing system reports that contain information or an identifier which would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

33.10(8) *Personally identifiable information and acceptance of federal requirements.* Pursuant to Iowa Code section 259.9, the state of Iowa accepts the social security system rules for the disability determination program of the division. Failure to follow the provisions of the Act can result in the loss of federal funds. All personally identifiable information is confidential and may be released only with informed written consent, except as permitted by federal law. Any contrary provision in Iowa Code chapter 22 must be waived in order for the state to receive federal funds, services, and essential information for the administration of vocational rehabilitation services.

877—33.11(84G,90GA,SF514) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the division other than record systems. These records are routinely available to the public, with the exception of parts of the records that contain confidential information. This rule generally describes the nature of the records, the type of information contained therein, and whether the records are confidential in whole or in part.

33.11(1) *Rulemaking.* Rulemaking records, including public comments on proposed rules, are not confidential.

33.11(2) *Council and commission records.* Agendas, minutes, and materials presented to any council or commission required under the Act are available to the public with the exception of those records that are exempt from disclosure under Iowa Code section 21.5. Council and commission records are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319.

33.11(3) *Publications.* News releases, annual reports, project reports, agency newsletters, and other publications are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319. Brochures describing various division programs are also available at local offices of the division.

33.11(4) *Statistical reports.* Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source and are available to the public.

33.11(5) *Grants.* Records of persons receiving grants from division services are available through the main office of the division. Grant records contain information about grantees and may contain information about employees of a grantee that has been collected pursuant to federal requirements.

33.11(6) *Published materials.* The division uses many legal and technical publications, which may be inspected by the public upon request. Some of these materials may be protected by copyright law.

33.11(7) *Policy manuals.* Manuals containing the policies and procedures for programs administered by the division are available on the division website. Printed copies of all or some of the documents are available at the cost of production and handling. Requests should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

33.11(8) *Operating expense records.* The division maintains records of the expense of operation of the division, including records related to office rent, employee travel expenses, and costs of supplies and postage, all of which are available to the public.

33.11(9) *Training records.* Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are available to the public.

33.11(10) *Other records.* The division maintains records of various sources not previously mentioned in this rule that are exempted from disclosure by law.

877—33.12(84G,90GA,SF514) State rehabilitation council.

33.12(1) *Composition.* The state rehabilitation council's composition is set forth in 34 CFR Section 361.17(b). The appointing authority is to select members of the council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the council. A majority of members must be individuals with disabilities who meet the requirements of 34 CFR Section 361.5(c)(28) and are not employed by the designated state unit.

33.12(2) *Chairperson.* The chairperson must be selected by the members of the council from among the voting members of the council.

33.12(3) *Terms.* Each member of the council shall be appointed for a term of no more than three years. Each member of the council, other than the representative of the client assistance program, shall serve for no more than two consecutive full terms. A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor's term and may serve one additional three-year term. The terms of service of the members initially appointed is to be for a varied number of years to ensure that terms expire on a staggered basis.

33.12(4) *Vacancies.* The governor will fill a vacancy in council membership.

33.12(5) *Functions.* The council, after consulting with the state workforce development board, performs the functions set forth in 34 CFR Section 361.17(h).

33.12(6) *Meetings.* The council must convene at least four meetings a year. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session. The council's meetings are subject to Iowa Code chapter 21, the open meetings law.

33.12(7) *Forums or hearings.* The council shall conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

33.12(8) *Conflict of interest.* No member of the council may cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under state law.

33.12(9) *Specific implementation clause.* This rule is intended to implement 34 CFR Sections 361.16 and 361.17.

877—33.13(84G,90GA,SF514) Iowa self-employment program: purpose. The division of vocational rehabilitation services works in collaboration with the department for the blind to administer the Iowa self-employment (ISE) program. The purpose of the program is to provide business development funds in the form of technical assistance (up to \$10,000) and financial assistance (up to \$10,000) to qualified Iowans with disabilities who start, expand, or acquire a business within the state of Iowa. Actual assistance is based on the requirements of the business, not to exceed the technical assistance and financial assistance limits.

877—33.14(84G,90GA,SF514) Program requirements.

33.14(1) Clients of the division or the department for the blind may apply for the program.

33.14(2) All of the following conditions are also applicable:

a. The division may limit or deny ISE assistance to an applicant who has previously received educational or training equipment from the division through another rehabilitation program when such equipment could be used in the applicant's proposed business.

b. Any equipment purchased for the applicant under this program that is no longer used by the applicant may be returned to the division, at the discretion of the division.

c. An applicant must demonstrate that the applicant has at least 51 percent ownership in a for-profit business that is actively owned, operated, and managed in Iowa.

d. Recommendation for and approval of financial assistance are based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

e. To receive financial support from the ISE program, the applicant's business plan feasibility study is to result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.

f. The division cannot support the purchase of real estate or improvements to real estate.

g. The division cannot provide funding to be used as a cash infusion, for personal or business loan repayments, or for personal or business credit card debt.

h. The division may deny ISE assistance to an applicant who desires to start, expand, or acquire any of the following types of businesses:

(1) A hobby or similar activity that does not produce income at the level required for self-sufficiency;

(2) A business venture that is speculative in nature or considered high risk by the Better Business Bureau or similar organization;

(3) A business registered with the federal Internal Revenue Service as a Section 501(c)(3) entity or other entity set up deliberately to be not for profit;

(4) A business that is not fully compliant with all local, state, and federal zoning requirements and all other applicable local, state, and federal requirements;

(5) A multitiered marketing business.

877—33.15(84G,90GA,SF514) Application procedure.

33.15(1) Application. Application materials for the program are available from the division and the department for the blind.

33.15(2) Submittal. Completed applications will be submitted to a counselor employed by the division or the department for the blind.

33.15(3) Review. Applications will be forwarded to a business development specialist employed by the division for review. Approval of technical assistance funding is based upon the results of a business plan feasibility study. If the application is for financial assistance only, a business plan feasibility study will be required at the time of submission of the application. Approval of financial assistance funding is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

33.15(4) Funding. Before the division will provide funding for a small business, the job candidate must complete an in-depth study about the business the job candidate intends to start and demonstrate that the business is feasible.

33.15(5) Appeal. If an application is denied, an applicant may appeal the decision to the division or the department for the blind. An appeal is governed by the appeal processes of the division or the department for the blind.

877—33.16(84G,90GA,SF514) Award of technical assistance funds.

33.16(1) Awards. Technical assistance funds may be used for specialized consulting services as determined necessary by the counselor, the business development specialist, and the job candidate. Technical assistance funds may be awarded, based on need, up to a maximum of \$10,000 per applicant. Specialized technical assistance may include, but is not limited to, engineering, legal, accounting, and computer services and other consulting services that require specialized education and training.

33.16(2) Technical assistance. When technical assistance is needed for specialized services beyond the expertise of the business development specialist, technical assistance will be provided to assist the job candidate.

33.16(3) Technical assistance contracts. The division shall negotiate contracts with qualified consultants for delivery of services to an applicant if specialized services are deemed necessary. The

contracts are to state hourly fees for services, the type of service to be provided, and a timeline for delivery of services. Authorization of payment will be made by a counselor employed by the division or the department for the blind based upon the negotiated rate as noted in the contract. A copy of each contract will be filed with the division.

33.16(4) Consultants. Applicants will be provided a list of qualified business consultants by the business development specialist if specialized consultation services are necessary. The selection of the consultant(s) is the responsibility of the applicant.

33.16(5) Case management. The business development specialist or counselor will be available as needed for direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

877—33.17(84G,90GA,SF514) Business plan feasibility study procedure. Information and materials are available from the division and the department for the blind. The job candidate is to submit the job candidate's business plan feasibility study to the job candidate's counselor if the study is completed at the time application is made or to the business development specialist if the business plan feasibility study is completed after application approval. The business development specialist is available to guide and assist in the analysis of the feasibility study.

877—33.18(84G,90GA,SF514) Award of financial assistance funds.

33.18(1) Awards. Following the business development specialist's review of the business plan feasibility study, the business development specialist will issue a recommendation to support or not to support the proposed business venture. The counselor is to make a decision regarding approval or denial of the recommendation. If the plan is approved, the job candidate and counselor will review conditions of the financial assistance award and sign the appropriate forms of acknowledgment.

a. Financial assistance funds may be awarded, based on need, up to \$10,000 after approval of a business plan feasibility study and evidence of business need or evidence of business progression. Before receiving financial assistance, the job candidate must demonstrate a dollar-for-dollar match based on the amount of funding needed. The match may be provided through approved existing business assets, cash, conventional financing or other approved sources.

b. Financial assistance funds may be approved for, but are not limited to, equipment, tools, printing of marketing materials, advertising, rent (up to six months), direct-mail postage, raw materials, inventory, insurance (up to six months), and other approved start-up, expansion, or acquisition costs.

33.18(2) Award process. The amount that may be recommended by the business development specialist and approved by the counselor will be provided when there is a need. Recipients of financial assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess business progress before additional funds are expended.

33.18(3) Financial assistance contracts. Contracts for financial assistance funds are the responsibility of the division and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

33.18(4) Vendors. Procurement of goods or services will follow procedures established by the department of administrative services. The type of goods or services to be obtained, as well as a timeline for delivery of such, are to be stated by the vendor and agreed upon by the division. Authorization for goods or services shall be made by a counselor employed by the division or the department for the blind based upon the negotiated rate and terms as noted in the contract. A copy of each contract is to be filed with the division. Approval for payment of authorized goods or services is to be made by authorized division personnel.

877—33.19(84G,90GA,SF514) References. All references to the Code of Federal Regulations (CFR) and United States Code (U.S.C.) in this chapter are as amended to November 1, 2023.

These rules are intended to implement Iowa Code chapter 84G as enacted by 2023 Iowa Acts, Senate File 514; the federal Rehabilitation Act of 1973; and the federal Social Security Act (42 U.S.C. Section 301 et seq.).

ARC 7106C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

**Proposing rulemaking related to tax credit programs
and providing an opportunity for public comment**

The Economic Development Authority (IEDA) hereby proposes to amend Chapter 43, “Hoover Presidential Library Tax Credit,” Chapter 47, “Endow Iowa Tax Credits,” Chapter 48, “Workforce Housing Tax Incentives Program,” and Chapter 116, “Tax Credits for Investments in Certified Innovation Funds,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 15.106A, 15.356, 15E.305 and 15E.364.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 15E.364 as amended by 2023 Iowa Acts, House File 703; section 15E.305 as amended by 2023 Iowa Acts, House File 710; and sections 15.353 and 15E.52 as amended by 2023 Iowa Acts, Senate File 575.

Purpose and Summary

The proposed rulemaking implements changes to multiple tax credit programs administered by IEDA to conform to 2023 Iowa Acts, House Files 703 and 710 and Senate File 575. The changes in the legislation include:

- House File 703 extends the availability of the Hoover presidential library tax credit until the end of calendar year 2024.
- House File 710 increases the allocation of available endow Iowa tax credits from \$6 million to \$13 million for tax year 2023. House File 710 also changes the applicability of 2022 Iowa Acts, chapter 1002, division VIII, to specify that the change to the maximum amount of tax credits granted to a taxpayer applied to endowment gifts made to an endow Iowa-qualified community foundation on or after January 1, 2023.
- Senate File 575 changes the workforce housing tax incentives program by adding construction of new dwelling units in urban areas as an eligible project type. Previously, greenfield development was an eligible project type in only small cities.
- Senate File 575 also changes the innovation investment tax credit by removing the requirement for IEDA to establish a wait list for fiscal years in which the amount of tax credit certificates applied for exceeds the amount allocated. Senate File 575 also extends the authority of IEDA to continue certifying new funds for the innovation fund tax credit until June 30, 2028. Previously, new certifications would have ceased as of June 30, 2023.

The proposed rulemaking would update the rules for each affected program to be consistent with the Iowa Code and, pursuant to Executive Order 10, remove statutory language.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the IEDA no later than 4:30 p.m. on November 21, 2023. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rulemaking may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend rule 261—43.3(15E) as follows:

261—43.3(15E) Authorization of tax credits.

43.3(1) For tax years beginning on or after January 1, 2021, but before January 1, ~~2024~~ 2025, a tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, equal to 25 percent of a donor’s charitable donation made on or after July 1, 2021, to the Hoover presidential foundation for the Hoover presidential library and museum renovation project fund.

43.3(2) A donor shall not claim a tax credit for a donation made during a tax year beginning before January 1, 2021, or after December 31, ~~2023~~ 2024.

43.3(3) No change.

ITEM 2. Amend subrule 47.3(3) as follows:

47.3(3) ~~The aggregate amount of tax credits available under this rule annually is \$6 million. For tax credits issued on or before December 31, 2022, the maximum amount of tax credit that may be granted to an individual taxpayer is limited to 5 percent of the aggregate amount available each year. For tax credits issued on or after January 1, 2023, the maximum amount of tax credit that may be granted to an individual taxpayer is limited to \$100,000. If the authority receives applications for tax credits in excess of the amount available, the applications shall be prioritized by the date the authority received the applications. Applications received on or before June 30, 2023, will be placed on a waitlist for a subsequent year’s allocation of tax credits if the number of applications exceeds the amount of annual tax credits available. Applications placed on the waitlist shall first be funded in the order listed on the~~

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

waitlist. Applications received on or after July 1, 2023, in excess of the amount of tax credits available will not be placed on the waitlist and will be denied by the authority. For endowment gifts made on or after June 30, 2023, a taxpayer shall submit an application to the authority for the tax credit no later than 12 months from the date of the donation which qualifies the taxpayer for the tax credit.

ITEM 3. Rescind subrule 48.4(1) and adopt the following **new** subrule in lieu thereof:

48.4(1) Eligible project types.

a. To receive workforce housing tax incentives pursuant to the program, a proposed housing project shall meet all of the requirements of Iowa Code section 15.353. Projects located in a 100-year floodplain are not eligible.

b. The authority will determine whether a dwelling unit should be classified as a single-family dwelling unit for the purposes of this subrule. The authority may consider factors such as:

- (1) Whether a unit is separated from other units by a ground-to-roof wall;
- (2) Whether the unit has a separate heating system;
- (3) Whether the unit has an individual meter for public utilities; and
- (4) Whether the unit has other units above or below.

ITEM 4. Rescind subrule **116.3(6)**.

ITEM 5. Rescind rule 261—116.6(15E) and adopt the following **new** rule in lieu thereof:

261—116.6(15E) Approval, issuance and distribution of investment tax credits.

116.6(1) Approval. Upon certification and registration by the authority of an innovation fund and approval of the taxpayer's application, the board will approve the issuance of a tax credit certificate to the applicant.

116.6(2) Preparation of the certificate. The tax credit certificate shall be in a form approved by the authority and shall contain the taxpayer's name, address, and tax identification number; the amount of credit; the name of the innovation fund; the year in which the investment was made and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this fund.

ARC 7105C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rulemaking related to renewable chemical production tax credit program and providing an opportunity for public comment

The Economic Development Authority (IEDA) hereby proposes to rescind Chapter 81, "Renewable Chemical Production Tax Credit Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 15.106A and 15.321.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 15.316 to 15.320 as amended by 2023 Iowa Acts, Senate File 575.

Purpose and Summary

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Pursuant to Executive Order 10, the IEDA proposes to rescind Chapter 81 relating to the Renewable Chemical Production Tax Credit Program and adopt a new chapter in lieu thereof.

The proposed new chapter incorporates changes to the program in 2023 Iowa Acts, Senate File 575. Changes in the legislation include:

- The maximum tax credit amount is now \$1 million for all businesses. Previously, businesses that have been in operation for more than five years were eligible for a maximum tax credit of \$500,000 and businesses in operation for five years or less were eligible for a maximum tax credit of \$1 million.

- The requirement that the IEDA maintains a wait list if demand for credits exceeds the annual allocation is eliminated.

- A requirement that the IEDA award credits via a competitive process is created.

- The definition of “building block chemical” is amended to exclude serine, threonine, and lysine. Production of those chemicals will no longer be eligible for a tax credit.

- The credit will be allowed for renewable chemical production until 2035. Previously, the credit was allowed only for production until 2026.

The proposed new chapter also omits rule language that is duplicative of statutory language and Iowa Department of Revenue (IDR) rules. Other nonsubstantive clarifying updates from the existing chapter are also proposed.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the IEDA no later than 4:30 p.m. on November 21, 2023. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

November 28, 2023
9 to 9:30 a.m.

1963 Bell Avenue
Des Moines, Iowa
Registration information for online
participation may be found at
www.iowaeda.com/red-tape-review/

December 4, 2023
1:30 to 2 p.m.

1963 Bell Avenue
Des Moines, Iowa
Registration information for online
participation may be found at
www.iowaeda.com/red-tape-review/

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the IEDA and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 261—Chapter 81 and adopt the following **new** chapter in lieu thereof:

CHAPTER 81
RENEWABLE CHEMICAL PRODUCTION TAX CREDIT PROGRAM

261—81.1(15) Purpose. The purpose of this chapter is to encourage development of the renewable chemicals industry and stimulate job growth using the renewable chemical production tax credit program to incentivize new and existing businesses to produce high-value renewable chemicals in Iowa from biomass feedstock.

261—81.2(15) Definitions. As used in this chapter, unless the context otherwise requires:

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Authority’s website*” means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

“*Biomass feedstock*” means the same as defined in Iowa Code section 15.316(2).

“*Board*” means the members of the economic development authority board appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Building block chemical*” means the same as defined in Iowa Code section 15.316(3) as amended by 2023 Iowa Acts, Senate File 575, and also includes benzene, toluene, xylene, ethylbenzene, butanoic acid, hexanoic acid, octanoic acid, pentanoic acid, heptanoic acid, ethylene glycol, and 1,4 butanediol, or such additional molecules as may be included by the authority following the procedure in rule 261—81.8(15).

“*Director*” means the director of the authority.

“*Eligible business*” means the same as defined in Iowa Code section 15.316(5).

“*Pre-eligibility production threshold*” means the same as defined in Iowa Code section 15.316(8).

“*Production year*” means any calendar year after the year in which the eligible business’s pre-eligibility production threshold was established and in which the eligible business produces renewable chemicals.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“*Program*” means the renewable chemical production tax credit program administered pursuant to Iowa Code sections 15.315 through 15.322 and this chapter.

“*Renewable chemical*” means the same as defined in Iowa Code section 15.316(10).

261—81.3(15) Eligibility requirements. To be eligible to receive the renewable chemical production tax credit pursuant to the program, a business shall meet all of the eligibility requirements in Iowa Code section 15.317.

261—81.4(15) Application process and review.

81.4(1) Applications for tax credits may be submitted to the authority electronically by eligible businesses from February 15 to March 15 of each calendar year. The authority may adjust the annual filing window dates under extenuating circumstances and will provide notice of adjustments on the authority’s website.

81.4(2) The application shall include all information required by Iowa Code section 15.318(1) “e” and all of the following information:

a. The name of the qualifying building block chemical produced by the eligible business for which the business is claiming a tax credit.

b. The amount of renewable chemicals produced in the state from biomass feedstock by the eligible business during the calendar year prior to the year in which the business first qualified as an eligible business under the program.

c. The city or county where the plant producing renewable chemicals is located.

d. The type of feedstock used to produce the renewable chemicals.

e. The date on which the eligible business organized, expanded or located in the state.

f. Any other information reasonably required by the authority in order to establish and verify the amount of the tax credit under the program.

81.4(3) Applications will be reviewed and scored on a competitive basis by a review committee established by the authority with relevant expertise and experience. If the authority deems that additional information is needed before reviewing and scoring can be completed, and the authority makes a written request for additional information from the applicant, the applicant must provide the requested information within 30 days of the date that the written request from the authority was made. If an applicant does not provide the requested information within 30 days, the application may be rejected by the authority.

81.4(4) Applications determined by the authority to be complete and eligible will be reviewed and scored using criteria established by the authority to evaluate the economic impact of an eligible business’s production of renewable chemicals.

81.4(5) The authority will notify an applicant when the applicant has been approved by the director to receive a tax credit.

261—81.5(15) Agreement and fees. An eligible business approved to receive a tax credit shall enter into an agreement and pay applicable fees pursuant to Iowa Code section 15.318(2) as amended by 2023 Iowa Acts, Senate File 575. Eligible businesses must sign the agreement within 60 days of being notified of approval for the tax credit. Upon request by an eligible business, the authority may extend the time period for signing the agreement by an additional 30 days.

261—81.6(15) Renewable chemical production tax credit.

81.6(1) *Calculation of tax credit amount.*

a. An eligible business that has entered into an agreement pursuant to rule 261—81.5(15) may be issued a tax credit certificate in an amount calculated as described in Iowa Code section 15.319(1). For example, if an eligible business produced three million pounds of renewable chemicals during calendar year 2016 and first became an eligible business under this chapter in calendar year 2017, the pre-eligibility production threshold for the business is three million pounds. If the same eligible business produced ten million pounds of renewable chemicals during calendar year 2017, the eligible

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

business could receive a tax credit for the amount produced over the pre-eligibility production threshold, which in this example equals seven million pounds.

b. If a business has facilities located in more than one state, only those renewable chemicals produced at facilities physically located in the state of Iowa may be counted for the purpose of calculating the tax credit.

c. If the same eligible business has an ownership or equity interest in multiple facilities at which renewable chemicals are produced, the facilities under common ownership will be considered a single eligible business for purposes of calculating the maximum tax credit amount. In calculating the maximum tax credit amount, only the pro rata share of each eligible business's ownership in a facility will be attributed to that eligible business.

d. The maximum amount of tax credit that may be issued under the program to an eligible business for the production of renewable chemicals in a calendar year shall not exceed the amount authorized by Iowa Code section 15.318(3) "a" as amended by 2023 Iowa Acts, Senate File 575.

81.6(2) *Eligible business only.* An eligible business shall not receive a tax credit for renewable chemicals produced before the date the business first qualified as an eligible business pursuant to rule 261—81.3(15).

81.6(3) *Maximum number of credits.* An eligible business shall not receive more tax credit certificates under the program than specified in Iowa Code section 15.318(3) "d" as amended by 2023 Iowa Acts, Senate File 575. Each tax credit must be applied for separately, and each application will be reviewed independently of past tax credits. Receipt of a tax credit in one year does not guarantee receipt of a tax credit in a subsequent year.

81.6(4) *Termination and repayment.* Tax credits may be reduced, terminated, or rescinded pursuant to Iowa Code section 15.318(4).

261—81.7(15) Claiming the tax credit.

81.7(1) *Maximum tax credit claimed.* An eligible business that has entered into an agreement pursuant to rule 261—81.5(15) and been issued a tax credit certificate pursuant to subrule 81.6(1) may claim a tax credit as described in Iowa Code section 15.319(1) as amended by 2023 Iowa Acts, Senate File 575.

81.7(2) *Claiming the credit.* To receive the tax credit, an eligible business shall file a claim in accordance with any applicable administrative rules adopted by the department of revenue.

261—81.8(15) Process to add building block chemicals.

81.8(1) *General process.* The authority may add additional molecules to the definition of "building block chemical" in rule 261—81.2(15) pursuant to Iowa Code section 15.316(3) as amended by 2023 Iowa Acts, Senate File 575. The authority may initiate the administrative rulemaking process for the addition of such molecules to this chapter.

81.8(2) *Request to include additional molecules.* Any individual or business may request that an additional molecule be added to the definition of "building block chemical" by submitting a written request to the authority. Such requests shall be made in the form prescribed by the authority and may be submitted to the authority between April 1 and May 1 of each calendar year and October 1 and November 1 of each calendar year. The authority may adjust these dates under extenuating circumstances and will provide notice of adjustments on the authority's website.

81.8(3) *Consultation with experts.* Prior to initiating a rulemaking to add molecules to the definition of "building block chemical" in rule 261—81.2(15), the authority shall consult with appropriate experts from Iowa state university, including but not limited to the Iowa state university center for biorenewable chemicals. The authority shall conduct an initial staff review of any requests received by the authority pursuant to subrule 81.8(2). Following the initial staff review, the authority shall consult with the experts at Iowa state university regarding the molecules that the authority believes are consistent with the definitions under this chapter. The experts at Iowa state university shall provide a written recommendation to the authority indicating which chemicals, in the experts' opinion, meet the definition of "building block chemical" consistent with this chapter.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

81.8(4) *Initiation of rulemaking proceedings.* Following the consultation and review process set forth in subrule 81.8(3), the authority may initiate the administrative rulemaking process to amend the definition of “building block chemical” to add molecules that the authority, in the authority’s sole discretion, finds to be consistent with the definitions in this chapter.

261—81.9(15) Additional information. The authority may at any time request additional information and documentation from an eligible business regarding the operations, job creation, and economic impact of the eligible business, and the authority may use the information in preparing and publishing any reports to be provided to the governor and the general assembly to the extent consistent with Iowa Code section 15.318(5).

These rules are intended to implement Iowa Code sections 15.315 through 15.322 as amended by 2023 Iowa Acts, Senate File 575.

ARC 7104C**PHARMACY BOARD[657]****Notice of Intended Action****Proposing rulemaking related to controlled substances and providing an opportunity for public comment**

The Board of Pharmacy hereby proposes to amend Chapter 10, “Controlled Substances,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 124.201.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 124.201.

Purpose and Summary

This proposed rulemaking temporarily adds five substances (novel psychoactive substances (NPS) of the benzodiazepine class, also known as “designer benzodiazepines”) to Schedule I of the Controlled Substances Act in response to similar action taken by the federal Drug Enforcement Administration.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on November 21, 2023. Comments should be directed to:

PHARMACY BOARD[657](cont'd)

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309
Email: sue.mears@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rulemaking may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind subrule 10.39(2) and adopt the following **new** subrule in lieu thereof:

10.39(2) Amend Iowa Code section 124.204(9) by adding the following new paragraphs:

j. 4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thienol[3,2-f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: etizolam.

k. 8-chloro-6-(2-fluorophenyl)-1-methyl-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: flualprazolam.

l. 6-(2-chlorophenyl)-1-methyl-8-nitro-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: clonazolam.

m. 8-bromo-6-(2-fluorophenyl)-1-methyl-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: flubromazolam.

n. 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2H-benzo[e][1,4]diazepin-2-one, its salts, isomers, and salts of isomers. Other name: diclazepam.

REVENUE DEPARTMENT

Interest rates

Starting January 1, 2024, the interest rate for taxpayers with overdue payments will be:

- 1.0% annually
- 0.8% monthly
- 0.027322% daily

Iowa Code section 421.7 specifies the procedures for calculating the Department’s annual and monthly interest rates. The annual rate is based on the average monthly prime rate during the preceding 12-month period (October through September). Iowa law requires that this average be rounded to the nearest whole percent and two percentage points be added to it. The prime rate averaged 7.78 percent over the past 12 months. Rounded to the nearest whole percent, this average is 8.0 percent. Adding two percentage points results in the annual Department rate of 10.0 percent. The monthly rate is the annual rate divided by 12, rounded to the nearest one-tenth of a percentage point. The daily rate for 2024, which is a leap year, is the annual rate divided by 366. (The average monthly bank prime rate is published by the United States Federal Reserve at www.federalreserve.gov/datadownload/Choose.aspx?rel=H15.)

ARC 7109C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to retirement income exclusion
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 301, “Filing Return and Payment of Tax,” Chapter 302, “Determination of Net Income,” and Chapter 307, “Withholding,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14 and 422.68.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 422.5, 422.7, 422.13 and 422.16.

Purpose and Summary

This proposed rulemaking is intended to implement the statutory change to the retirement income exclusion from a partial to a full exclusion for qualifying taxpayers receiving distributions from qualifying plans. This proposed rulemaking identifies certain plans that do and do not qualify for the exclusion as well as defining how survivors with an insurable interest may qualify for the exclusion. This proposed rulemaking also updates what items of income are and are not required to be added back to Iowa taxable income to determine whether a taxpayer has a filing requirement, including eliminating excluded retirement income from the required add backs. Finally, this proposed rulemaking updates rules related to withholding to implement the full exclusion for retirement income described above.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa beyond that of the legislation it implements.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on November 21, 2023. Comments should be directed to:

Kurt Konek
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.587.0440
Email: kurt.konek@iowa.gov

Public Hearing

REVENUE DEPARTMENT[701](cont'd)

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
11 a.m. to 12 noon

Via video/conference call

Persons who wish to participate in the video/conference call should contact Kurt Konek before 4:30 p.m. on November 21, 2023, to facilitate an orderly hearing. A video link and conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend rule 701—301.1(422) as follows:

701—301.1(422) Who must file.

301.1(1) Residents of Iowa.

a. Tax years beginning on or after January 1, 1993 Residents under 65 years of age. For each taxable year, every resident of Iowa, except any resident claimed as a dependent on another person's return, whose net income is greater than \$13,500 in the case of married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ heads of household, and surviving spouses or greater than \$9,000 in the case of single persons must make, sign, and file a return. Each resident who is claimed as a dependent on another person's return and whose net income is \$4,000 or more, or whose net income is \$5,000 or more for tax years beginning on or after January 1, 2001, must make, sign, and file a return. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax, ~~along with the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422),~~ is federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover are included in net income to determine if a person must file a return. ~~In addition, for tax years beginning on or after January 1, 2007, the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) for residents who are younger than 65 years of age on December 31 of the tax year is included in net income to determine if a person must file a return.~~

b. Tax years beginning on or after January 1, 2007, but before January 1, 2009, for residents 65 years of age or older. For these taxable years, every resident of Iowa, except any resident claimed as a dependent on another person's return, who is at least 65 years of age or older on December 31 of the tax year, whose net income is greater than \$24,000 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses or greater than \$18,000 in the case of single persons must make, sign, and file a return. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. Each resident who is claimed as a dependent on another person's return and whose net income is \$5,000 or more must make, sign, and file a return.

REVENUE DEPARTMENT[701](cont'd)

~~For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) are included in net income to determine if a person must file a return.~~

~~*e. b. Tax years beginning on or after January 1, 2009, for residents Residents 65 years of age or older.* For each taxable year, every resident of Iowa, except any resident claimed as a dependent on another person's return, who is at least 65 years of age or older on December 31 of the tax year, whose net income is greater than \$32,000 in the case of married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ heads of household, and surviving spouses or greater than \$24,000 in the case of single persons must make, sign, and file a return. For married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ only one spouse is required to be at least 65 years of age or older on December 31 of the tax year. Each resident who is claimed as a dependent on another person's return and whose net income is \$5,000 or more must make, sign, and file a return.~~

~~For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover taken for federal purposes are included in net income to determine if a person must file a return.~~

301.1(2) Nonresidents of Iowa.

~~*a. Tax years beginning on or after January 1, 1993 Nonresidents under 65 years of age.* For each taxable year, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$13,500 in the case of married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ heads of household, and surviving spouses, (2) has a net income from all sources greater than \$9,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of \$4,000 or more ~~or has a net income from all sources of \$5,000 or more if the tax year begins on or after January 1, 2001.~~ For purposes of this paragraph, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the nonresident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, ~~along with the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422),~~ is federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover are included in net income to determine if a person must file a return. ~~In addition, for tax years beginning on or after January 1, 2007, the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) for nonresidents who are under 65 years of age on December 31 of the tax year is included in determining net income from all sources to determine if a person must file a return.~~~~

~~*b. Tax years beginning on or after January 1, 2007, but before January 1, 2009, for nonresidents 65 years of age or older.* For these taxable years, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$24,000 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses, (2) has a net income from all sources greater than \$18,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of at least \$5,000. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the nonresident has sufficient net income from Iowa sources to make and file a return. In determining net income from~~

REVENUE DEPARTMENT[701](cont'd)

all sources, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) are included in net income to determine if a person must file a return.

e. b. Tax years beginning on or after January 1, 2009, for nonresidents Nonresidents 65 years of age or older. For these taxable years, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$32,000 in the case of married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ heads of household, and surviving spouses, (2) has a net income from all sources greater than \$24,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of at least \$5,000. For married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ only one spouse is required to be 65 years of age or older on December 31 of the tax year. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the nonresident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, ~~the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) are~~ is included in net income to determine if a person must file a return.

d.—Nonresidents with net incomes of less than \$1,000 that are subject to Iowa alternative minimum tax. For tax years beginning on or after January 1, 2000, every nonresident of Iowa who has a net income from Iowa sources of less than \$1,000 must make, sign, and file a return if the nonresident is subject to Iowa alternative minimum tax.

301.1(3) Part-year residents of Iowa.

a. Tax years beginning on or after January 1, 1993 Part-year residents under 65 years of age. For each taxable year, every part-year resident of Iowa must make, sign, and file a return if the individual has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$13,500 in the case of married persons ~~filing jointly, filing separately on a combined return form or filing separate returns,~~ heads of household, and surviving spouses, (2) has a net income from all sources that is greater than \$9,000 in the case of a single person, or (3) is claimed as a dependent on another person's return and had a net income from all sources of \$4,000 or more ~~or has a net income from all sources of \$5,000 or more if the tax year begins on or after January 1, 2001.~~ For purposes of this paragraph, the portion of a lump-sum distribution that is allocable to Iowa is included in net income to determine if the person has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, ~~along with the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), is~~ federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover are included in net income to determine if a person must file a return. ~~In addition, for tax years beginning on or after January 1, 2007, the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) for part-year residents who are younger than 65 years of age on December 31 of the tax year is included in determining net income from all sources to determine if a person must file a return.~~

b.—Tax years beginning on or after January 1, 2007, but before January 1, 2009, for nonresidents 65 years of age or older. For these taxable years, every part-year resident of Iowa must make, sign, and file an Iowa return if the part-year resident has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$24,000 in the case of married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ heads of household and surviving spouses, (2) has a net income from all sources greater than \$18,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of at least \$5,000. For married persons ~~filing jointly, filing separately~~

REVENUE DEPARTMENT[701](cont'd)

on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the part-year resident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) are included in net income to determine if a person must file a return.

e. b. Tax years beginning on or after January 1, 2009, for part-year Part-year residents 65 years of age or older. For these taxable years, every part-year resident of Iowa must make, sign, and file an Iowa return if the part-year resident has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$32,000 in the case of married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ heads of household, and surviving spouses, (2) has a net income from all sources greater than \$24,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of at least \$5,000. For married persons ~~filing jointly, filing separately on a combined return or filing separate returns,~~ only one spouse is required to be 65 years of age or older on December 31 of the tax year. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the part-year resident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, ~~the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3)~~ federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover are included in net income to determine if a person must file a return.

d.—Part-year residents with net incomes of less than \$1,000 that are subject to Iowa alternative minimum tax. For tax years beginning on or after January 1, 2000, every part-year resident of Iowa who has a net income from Iowa sources of less than \$1,000 must make, sign, and file a return if the part-year resident is subject to Iowa alternative minimum tax.

301.1(4) Returns of the handicapped Incapacity to file a return. If a taxpayer is physically or mentally unable to make a return, the return shall be made by a duly authorized agent, guardian or other person charged with the care of the person or property of such taxpayer. A power of attorney must accompany a return made by an agent or guardian.

301.1(5) and 301.1(6) No change.

301.1(7) Returns filed for refund. A taxpayer whose Iowa source net income or all source net income is less than the amount for which the filing of an Iowa individual income tax return is required must file a return to receive a refund of Iowa income tax withheld or Iowa estimated tax paid in the tax year or to receive a refund from an Iowa refundable tax credit. ~~Refundable tax credits include the child and dependent care credit, the early childhood development tax credit, the research activities credit, the motor vehicle fuel tax credit, the claim of right credit (if elected in accordance with rule 701—300.18(422)), the assistive device credit, the historic preservation and cultural and entertainment district tax credit, the ethanol blended gasoline tax credit, the investment tax credit for value-added agricultural products or biotechnology-related processes, the soy-based cutting tool oil tax credit, the wage benefit tax credit, the soy-based transformer fluid tax credit, the E-85 gasoline promotion tax credit, the biodiesel blended fuel tax credit, the ethanol promotion tax credit, and the E-15 plus gasoline promotion tax credit.~~

301.1(8) Returns filed by out-of-state business or out-of-state employee performing disaster and emergency-related work during a disaster response period. On or after January 1, 2016, see 701—Chapter 276 for filing requirements of an out-of-state business or out-of-state employee as defined in Iowa Code section 29C.24 who enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

This rule is intended to implement Iowa Code sections 422.5 and 422.13.

REVENUE DEPARTMENT[701](cont'd)

ITEM 2. Amend rule 701—301.5(422) as follows:

701—301.5(422) Payment of tax.

301.5(1) to 301.5(7) No change.

301.5(8) and 301.5(9) Reserved.

301.5(10) *Thirteen thousand five hundred dollar exemption.* ~~For tax years beginning on or after January 1, 1993, all~~ All taxpayers, except single taxpayers described in subrule 301.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, ~~the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3),~~ federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover is \$13,500 or less are exempt from paying Iowa individual income tax subject to the following conditions:

a. In the case of married taxpayers, the incomes of both spouses are considered in order to determine if the taxpayers qualify for exemption from tax. However, in the case of married taxpayers where one spouse has a net operating loss and the taxpayers file separate Iowa returns ~~or separately on the combined return form,~~ the taxpayers cannot receive the benefit of the exemption from tax if the spouse with the loss elects to carry back or carry forward that loss.

b. An individual claimed as a dependent on another person's return with an income of at least \$5,000 ~~(\$4,000 for tax years beginning in 1993 but before 2001)~~ but not more than \$13,500 will be exempt from Iowa tax if:

(1) The person on whose return the dependent is claimed is filing as a single individual and has a net income of \$9,000 or less, or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of \$13,500 or less.

(3) The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of \$13,500 or less.

c. If the payment of tax would reduce the net income to less than \$13,500, the tax shall be reduced to an amount which would allow the taxpayer to retain a net income of \$13,500. Example: If a taxpayer's net income was \$13,600 and the computed tax after personal exemptions and other credits was \$300, the payment of \$300 would reduce the income below \$13,500; therefore, the amount of tax is reduced to \$100 so the taxpayer can retain a net income of \$13,500.

301.5(11) *Nine thousand dollar exemption.* ~~For tax years beginning on or after January 1, 1993, single~~ Single taxpayers described in subrule 301.4(1) whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, ~~the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3),~~ federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover is \$9,000 or less are exempt from paying Iowa individual income tax subject to the following conditions:

a. An individual claimed as a dependent on another person's return with an income of at least \$5,000 ~~(\$4,000 for tax years beginning in 1993 but before 2001)~~ but not more than \$9,000 will be exempt from tax if:

(1) The person on whose return the dependent is claimed has a net income of \$9,000 or less, or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of \$13,500 or less.

(3) The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of \$13,500 or less.

REVENUE DEPARTMENT[701](cont'd)

b. If the payment of tax would reduce the net income to less than \$9,000, the tax is reduced to an amount which will allow the taxpayer to retain a net income of \$9,000.

301.5(12) *Exemptions for taxpayers 65 years of age or older for tax years beginning on or after January 1, 2007, but before January 1, 2009.*

a. All taxpayers except single taxpayers described in subrule 301.4(1) who are 65 years of age or older on December 31 of the tax year and whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) is \$24,000 or less are exempt from paying Iowa individual income tax subject to the conditions set forth below:

(1) In the case of married taxpayers, the incomes of both spouses are considered in order to determine if the taxpayers qualify for exemption from tax. For purposes of this subrule, only one spouse is required to be 65 years of age or older by December 31 of the tax year. However, in the case of married taxpayers when one spouse has a net operating loss and the taxpayers file separate Iowa returns or separately on the combined return, the taxpayers cannot receive the benefit of the exemption from tax if the spouse with the loss elects to carry back or carry forward that loss.

(2) An individual claimed as a dependent on another person's return with an income of at least \$5,000, but not more than \$24,000, will be exempt from Iowa tax if:

1. The person on whose return the dependent is claimed is filing as a single individual and has a net income of \$9,000 or less (\$18,000 or less if the person is 65 years of age or older); or

2. The person on whose return the dependent is claimed and the person's spouse have a combined net income of \$13,500 or less (\$24,000 or less of the combined income of the person and the person's spouse if at least one spouse is 65 years of age or older); or

3. The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of \$13,500 or less (\$24,000 or less if the person is 65 years of age or older).

(3) If the payment of tax would reduce the net income to less than \$24,000, the tax shall be reduced to an amount which would allow the taxpayer to retain a net income of \$24,000.

EXAMPLE: If a taxpayer's net income was \$24,100 and the computed tax after personal exemptions and other credits was \$300, the payment of \$300 would reduce the income below \$24,000; therefore, the amount of tax is reduced to \$100 in order for the taxpayer to retain a net income of \$24,000.

b. Single taxpayers described in subrule 301.4(1) whose net income, as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3) is \$18,000 or less are exempt from paying Iowa individual income tax subject to the conditions set forth in paragraphs "c" and "d" below:

c. An individual claimed as a dependent on another person's return with an income of at least \$5,000, but not more than \$18,000, will be exempt from tax if:

(1) The person on whose return the dependent is claimed has a net income of \$9,000 or less (\$18,000 or less if the person is 65 years of age or older); or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of \$13,500 or less (\$24,000 or less of the combined income of the person and the person's spouse if at least one spouse is 65 years of age or older); or

(3) The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of \$13,500 or less (\$24,000 or less if the person is 65 years of age or older).

d. If the payment of tax would reduce the net income to less than \$18,000, the tax is reduced to an amount which will allow the taxpayer to retain a net income of \$18,000.

301.5(13) *Exemptions for taxpayers 65 years of age or older for tax years beginning on or after January 1, 2009.*

REVENUE DEPARTMENT[701](cont'd)

a. All taxpayers except single taxpayers described in subrule 301.4(1) who are at least 65 years of age or older on December 31 of the tax year and whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, ~~the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3)~~ federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover is \$32,000 or less are exempt from paying Iowa individual income tax subject to the conditions set forth below:

(1) In the case of married taxpayers, the incomes of both spouses are considered in order to determine if the taxpayers qualify for exemption from tax. For purposes of this subrule, only one spouse is required to be 65 years of age or older by December 31 of the tax year. However, in the case of married taxpayers when one spouse has a net operating loss and the taxpayers file separate Iowa returns ~~or separately on the combined return form~~, the taxpayers cannot receive the benefit of the exemption from tax if the spouse with the loss elects to carry back or carry forward that loss.

(2) An individual claimed as a dependent on another person's return with an income of at least \$5,000, but not more than \$32,000, will be exempt from Iowa tax if:

1. The person on whose return the dependent is claimed is filing as a single individual and has a net income of \$9,000 or less (\$24,000 or less if the person is 65 years of age or older); or
2. The person on whose return the dependent is claimed and the person's spouse have a combined net income of \$13,500 or less (\$32,000 or less of the combined income of the person and the person's spouse if at least one spouse is 65 years of age or older); or
3. The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of \$13,500 or less (\$32,000 or less if the person is 65 years of age or older).

(3) If the payment of tax would reduce the net income to less than \$32,000, the tax shall be reduced to an amount which would allow the taxpayer to retain a net income of \$32,000.

EXAMPLE: If a taxpayer's net income was \$32,100 and the computed tax after personal exemptions and other credits was \$300, the payment of \$300 would reduce the income below \$32,000; therefore, the amount of tax is reduced to \$100 in order for the taxpayer to retain a net income of \$32,000.

b. Single taxpayers described in subrule 301.4(1) whose net income, as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, ~~the partial exclusion of pension and other retirement benefits described in rule 701—302.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 302.23(3)~~ federal standard or itemized deduction taken on the federal return, the personal exemption allowed for federal purposes, the qualified business income deduction allowed for federal purposes, and any net operating loss carryover is \$24,000 or less are exempt from paying Iowa individual income tax subject to the conditions set forth in paragraphs "*c*" and "*d*" below:

c. An individual claimed as a dependent on another person's return with an income of at least \$5,000, but not more than \$24,000, will be exempt from tax if:

- (1) The person on whose return the dependent is claimed has a net income of \$9,000 or less (\$24,000 or less if the person is 65 years of age or older); or
- (2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of \$13,500 or less (\$32,000 or less of the combined income of the person and the person's spouse if at least one spouse is 65 years of age or older); or
- (3) The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of \$13,500 or less (\$32,000 or less if the person is 65 years of age or older).

d. If the payment of tax would reduce the net income to less than \$24,000, the tax is reduced to an amount which will allow the taxpayer to retain a net income of \$24,000.

This rule is intended to implement Iowa Code section 422.5 as amended by 2006 Iowa Acts, Senate File 2408, and sections 422.16, 422.17, 422.21, 422.24, and 422.25.

REVENUE DEPARTMENT[701](cont'd)

ITEM 3. Amend rule 701—302.47(422) as follows:

701—302.47(422) Partial exclusion Exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors. For tax years beginning on or after January 1, 1995 2023, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a ~~partial~~ an exclusion of retirement benefits received in the tax year. For tax years ~~beginning on or after January 1, 2001~~, the ~~partial exclusion~~ of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return. For tax years ~~beginning on or after January 1, 1998~~, the ~~partial exclusion~~ of retirement benefits received in the tax year was increased up to a maximum of \$5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion shall be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses. See rule 701—302.80(422) for the exclusion of military retirement pay for tax years beginning on or after January 1, 2014 and rule 701—302.23(422) for the exclusion of Social Security benefits.

EXAMPLE 1. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The wife received \$95,000 in retirement benefits and the husband received \$5,000 in retirement benefits. Since the wife received 95 percent of the retirement benefits, she would be entitled to 95 percent of the \$10,000 retirement income exclusion or a retirement income exclusion of \$9,500. The husband would be entitled to 5 percent of the \$10,000 retirement income exclusion or an exclusion of \$500.

EXAMPLE 2. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The husband had \$15,000 in retirement benefits from a pension. The wife received no retirement benefits. In this situation, the husband can use the entire \$10,000 retirement income exclusion to exclude \$10,000 of his pension benefits since the spouse did not use any of the \$10,000 retirement income exclusion for the tax year.

EXAMPLE 3. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$20,000. The other spouse was 55 years of age and received no pension income. Since the spouse receiving the pension income was not 55 years of age, no exclusion is allowed on the Iowa return.

EXAMPLE 4. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$10,000. The other spouse was 55 years of age and received a pension income of \$8,000. Since only one spouse receiving the pension income was 55 years of age, an exclusion of \$8,000 is allowed on the Iowa return. The exclusion of \$8,000 is allowed since a married couple is allowed a combined exclusion of up to \$12,000.

For tax years beginning on or after January 1, 1995, but prior to January 1, 1998, the retirement income exclusion was up to \$3,000 for single individuals, up to \$3,000 for each married person filing a separate Iowa return, up to \$3,000 for each married person filing separately on the combined return form, and up to \$6,000 for married taxpayers filing joint Iowa returns. For example, a married couple elected to file separately on the combined return form and both spouses were 55 years of age or older. One spouse had \$2,000 in pension income that could be excluded, since the pension income was \$3,000 or less. The other spouse had \$6,000 in pension income and could exclude \$3,000 of that income due to the retirement income exclusion. This second spouse could not exclude an additional \$1,000 of the up to \$3,000 retirement income exclusion that was not used by the other spouse.

302.47(1) Retirement income.

REVENUE DEPARTMENT[701](cont'd)

a. Qualifying retirement income. Generally, distributions from documented retirement plans meeting the qualification requirements in the Internal Revenue Code qualify for the retirement income exclusion. The following is a nonexclusive list of plans that qualify for the retirement income exclusion:

(1) Traditional individual retirement account (IRA) authorized under Internal Revenue Code Section 408(a).

(2) Roth individual retirement account (Roth IRA) authorized under Internal Revenue Code Section 408A.

(3) Roth conversion income.

(4) Simplified employee pension individual retirement arrangement (SEP-IRA) defined in Internal Revenue Code Section 408(k).

(5) Savings incentive match plan for employees (SIMPLE IRA) defined under Internal Revenue Code Section 408(p).

(6) Qualified deferred compensation plans including those authorized under Internal Revenue Code Sections 401(k) and 457(b).

(7) A defined benefit plan, pension plan, profit-sharing plan, or stock bonus plan qualified under Internal Revenue Code Section 401 including IPERS and employee stock ownership plans (ESOPs).

(8) Keogh plans or HR 10 plans.

(9) Eligible combined plans described in Internal Revenue Code Section 414(x).

b. Retirement income that does not qualify. Generally, distributions from retirement plans that do not meet the qualification requirements in the Internal Revenue Code do not qualify for the retirement income exclusion. The following nonexclusive list of plans do not qualify for the retirement income exclusion:

(1) Nonqualified deferred compensation plans described in Internal Revenue Code Section 409A.

(2) Nonqualified annuities.

302.47(2) Survivors having an insurable interest.

a. Insurable interest. “*Insurable interest*” is a term used in life insurance which also applies to this rule and is defined to be “such means an interest in the life of the person insured, arising from the relations of the party obtaining the insurance, either as credit of or surety for the assured insured, or from the ties of blood or marriage to him the insured, as would justify a reasonable expectation of advantage or benefit from the continuance of his the life of the insured.” *Warnock v. Davis*, 104 U.S. 775, 779, 26 L.Ed. 924; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Adams’ Adm’r v. Reed*, Ky., 36 S.W. 568, 570; *Trinity College v. Travelers’ Co.*, 18 S.E. 175, 176, 113 N.C. 244, 22 L.R.A. 291; *Opitz v. Karel*, 95 N.W. 948, 951, 118 Wis. 527, 62 L.R.A. 982. It is not necessary that the expectation of advantage or profit should always be capable of pecuniary estimation, for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful, as operating the more efficaciously, to protect the life of the insured than any other consideration, but in all cases there must be a reasonable ground, founded on relations to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Warnock v. Davis*, 104 U.S. 775, 26 L.Ed. 924; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800. For purposes of this rule, the term “insurable interest” applies to a beneficiary receiving retirement benefits due to the death of a decedent under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the decedent. Case law related to an insurable interest in the life insurance context is relevant in determining whether a beneficiary is a survivor with an insurable interest.

b. Survivors with an insurable interest must be natural persons. Only natural persons may be a survivor with an insurable interest for purposes of this exclusion.

c. Parties deemed to have an insurable interest by relationship. Some relationships are deemed so close that the individual will have an insurable interest in the decedent. These are spouses in each others’ lives, parents in the lives of their children, and children in the lives of their parents.

REVENUE DEPARTMENT[701](cont'd)

d. Individuals other than close relations may be a survivor with an insurable interest. Individuals other than those with a relationship with the decedent described in paragraph 302.47(2)“b” must establish that they had a pecuniary interest in the continuation of the life of the decedent at the time of death to be considered a survivor with an insurable interest. The beneficiary has the burden of proof to show that the beneficiary had a reasonable expectation of an advantage or benefit that the beneficiary would have received with the continuance of the life of the decedent. Being named a beneficiary of the retirement plan alone does not establish that an individual is a survivor with an insurable interest.

EXAMPLE: A grandson was receiving college tuition regularly from his grandfather and received the grandfather’s pension as a beneficiary of the grandfather after the grandfather’s death. The grandson would be deemed to have an insurable interest in the benefits and would be eligible for the retirement income exclusion.

~~For purposes of this rule, the term “insurable interest” will be considered to apply to a beneficiary receiving retirement benefits due to the death of a pensioner or annuitant under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the pensioner or annuitant.~~

~~For purposes of this rule, the term “survivor” is a person other than the surviving spouse of an annuitant or pensioner who is receiving the annuity or pension benefits because the person was a beneficiary of the pensioner or annuitant at the time of death of the pensioner or annuitant. In addition, in order for this person to qualify for the partial exclusion of pensions or retirement benefits, this survivor must have had an insurable interest in the pensioner or annuitant at the time of death of the annuitant or pensioner.~~

~~A survivor other than the surviving spouse will be considered to have an insurable interest in the pensioner or annuitant if the survivor is a son, daughter, mother, or father of the annuitant or pensioner. The relationship of these individuals to the pensioner or annuitant is considered to be so close that no separate pecuniary or monetary interest between the pensioner or annuitant and any of these relatives must be established.~~

~~A survivor may include relatives of the pensioner or annuitant other than those relatives that were mentioned above. However, before any of these relatives can be considered to be a survivor for purposes of this rule, the relative must have had some pecuniary interest in the continuation of the life of the pensioner or annuitant. That is, the relative must establish a relationship with the pensioner or annuitant that shows there was a reasonable expectation of an advantage or benefit which the person would have received with the continuance of the life of the pensioner or annuitant.~~

~~The fact that a niece of the pensioner or annuitant was named beneficiary of an uncle’s pension where the uncle had no closer relatives does not in itself establish that the niece had an insurable interest in the pension benefits, if the niece was not receiving monetary benefits or the niece did not have some special relationship to the uncle at the time of the uncle’s death.~~

~~If a grandson was receiving college tuition regularly from his grandfather and received the grandfather’s pension as a beneficiary of the grandfather after the grandfather’s death, the grandson would be deemed to have an insurable interest in the benefits and would be eligible for the partial retirement benefit exclusion.~~

~~A person who is not related to the pensioner or annuitant, such as a partner in a business or a creditor, may have an insurable interest in the pensioner or annuitant. However, the burden of proof is on a nonrelated person to show that the person had an insurable interest in the pensioner or the annuitant at the time of death of the pensioner or annuitant.~~

~~There are numerous court cases which deal with whether a person had established an insurable interest in the life of an individual that was insured. These cases may be used as a guideline to determine whether or not a person receiving a pension or annuity due to the death of an annuitant or pensioner had an insurable interest in the annuitant or pensioner at the time of death of the pensioner or annuitant. Thus, if a person would have met criteria for an insurable interest for purposes of an interest in a person’s life insurance policy, the person would also be considered to be qualified for an insurable interest in a pensioner or annuitant.~~

REVENUE DEPARTMENT[701](cont'd)

~~Retirement benefits subject to the retirement income exclusion include, but are not limited to: benefits from defined benefit or defined contribution pension and annuity plans, benefits from annuities, incomes from individual retirement accounts, benefits from pension or annuity plans contributed by an employer or maintained or contributed by a self-employed person and benefits and earnings from deferred compensation plans. However, the exclusion does not apply to social security benefits. A surviving spouse who is not disabled or is not 55 years of age or older can only exclude retirement benefits received as a result of the death of the other spouse and on the basis that the deceased spouse would have been eligible for the exclusion in the tax year. In order for a survivor other than the surviving spouse to qualify for the partial exclusion of retirement benefits, the survivor must have received the retirement benefits as a result of the death of a pensioner or annuitant who would have qualified for the exclusion in the tax year on the basis of age or disability. In addition, the survivor other than the surviving spouse would have had to have an insurable interest in the pensioner or annuitant at the time of the death of the pensioner or annuitant.~~

302.47(3) Disabled individuals. For purposes of this rule, a disabled individual is a person who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

~~Note that the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for purposes of determining whether or not a particular individual's income is low enough to exempt that taxpayer from tax. In addition, the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for the alternative tax computation, which is available to all taxpayers except those taxpayers filing as single individuals.~~

~~Finally, the pension or other retirement benefits are to be considered as a part of net income for individuals using the single filing status whose tax liabilities are limited so the liabilities cannot reduce the person's net income plus exempt benefits below \$9,000, or below \$18,000 for taxpayers 65 years of age or older for the 2007 and 2008 tax years, or below \$24,000 for taxpayers 65 years of age or older for the 2009 and subsequent tax years.~~

~~This rule is intended to implement Iowa Code sections 422.5 and 422.7.~~

ITEM 4. Amend rule 701—302.80(422) as follows:

701—302.80(422) Exemption for military retirement pay. ~~For tax years beginning on or after January 1, 2014, retirement~~ Retirement pay received by taxpayers from the federal government for military service performed in the armed forces, armed forces reserves, or national guard is exempt from state income tax. In addition, amounts received by a surviving spouse, former spouse, or other beneficiary of a taxpayer who served in the armed forces, armed forces reserves, or national guard under the Survivor Benefit Plan are also exempt from state income tax ~~for tax years beginning on or after January 1, 2014.~~ The retirement pay is only deductible to the extent it is included in the taxpayer's federal adjusted gross taxable income.

302.80(1) Coordination with pension exclusion. The exclusion of retirement pay is in addition to the ~~partial~~ exclusion, provided in rule 701—302.47(422), of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses and survivors. In addition, taxpayers who do not qualify for the exclusion in rule 701—302.47(422) and who receive retirement pay under federal law that combines retirement pay for both uniformed service and the federal civil service retirement system or federal employees' retirement system must prorate the retirement pay based on years of service.

EXAMPLE 1: A married individual who is 60 years of age receives \$20,000 of federal retirement pay from military service and \$30,000 in retirement pay from the Iowa public employees' retirement system during the 2014 tax year. The taxpayer can exclude \$20,000 of military retirement pay and \$12,000 as a pension exclusion under rule 701—302.47(422), for a total exclusion of \$32,000 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 2: A single taxpayer who is 65 years of age receives \$60,000 as a federal pension during the 2014 tax year. The taxpayer has 20 years of military service and 27 years of civilian employment with the federal government. The military retirement pay portion is \$25,532 (20 years divided by 47 years multiplied by \$60,000). The taxpayer can exclude \$25,532 of military retirement pay and \$6,000 as a pension exclusion under rule 701—302.47(422), for a total exclusion of \$31,532 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

EXAMPLE: A single taxpayer who is not disabled and is 50 years of age receives \$60,000 as a federal pension during the tax year. The taxpayer has 20 years of military service and 10 years of civilian employment with the federal government. The military retirement pay portion is \$40,000 (20 years, divided by 30 years, multiplied by \$60,000). The taxpayer can exclude \$40,000 of military retirement pay. The taxpayer may not exclude the \$20,000 of civilian retirement pay since it does not qualify for the exclusion in rule 701—302.47(422) because the taxpayer is under 55 years of age and is not disabled.

302.80(2) *Coordination with filing threshold and alternate tax.* The military retirement pay is excluded from the calculation of income used to determine whether an Iowa income tax return is required to be filed pursuant to 701—subrules 301.1(1) and 301.5(10) through 301.5(13). In addition, the military retirement pay is excluded from the calculation of the special tax computation for all low-income taxpayers except single taxpayers pursuant to rule 701—301.9(422) and is excluded from the calculation of the special tax computation for taxpayers who are 65 years of age or older under rule 701—301.15(422).

302.80(3) *Iowa withholding.* The amount of military retirement pay is excluded from the calculation of payments used to determine whether Iowa tax should be withheld from pension and annuity payments as determined pursuant to 701—subrule 307.3(4).

This rule is intended to implement Iowa Code sections 422.5 and 422.7 as amended by 2014 Iowa Acts, Senate File 303.

ITEM 5. Amend subrule 307.1(2) as follows:

307.1(2) *Withholding on pensions, annuities and other nonwage payments to Iowa residents.* State income tax is required to be withheld from payments of pensions, annuities, supplemental unemployment benefits and sick pay benefits and other nonwage income payments made to Iowa residents in those circumstances mentioned in the following paragraphs. This subrule covers those nonwage payments described in Sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code. This includes, but is not limited to, payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts, lump-sum distributions from qualified retirement plans, other retirement plans, and annuities, endowments and life insurance contracts issued by life insurance companies. These payments are subject to Iowa withholding tax if they are also subject to federal withholding tax. However, no state income tax withholding is required from nonwage payments to residents to the extent those payments are not subject to state income tax. ~~See paragraph 307.1(2)“h” for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001.~~ In the case of some nonwage payments to residents, such as payments of pensions and annuities, no state income tax is required to be withheld if no federal income tax is being withheld from the payments of the pensions and annuities. ~~The rate of withholding on the nonwage payments described in this subrule is 5 percent of the payment amounts or 5 percent of the taxable amounts unless specified otherwise.~~

For purposes of this subrule, an individual receiving nonwage payments will be considered to be an Iowa resident and subject to this subrule if the individual's permanent residence is in Iowa. The fact that a nonwage payment is deposited in a recipient's account in a financial institution located outside Iowa does not mean that the recipient's permanent residence is established in the place where the financial institution is situated.

Payers of pension and annuity benefits and other nonwage payments have the option of either withholding Iowa income tax from these payments on the basis of tables and formulas included in the Iowa withholding tax guide of the department of revenue or withholding Iowa income tax from these

REVENUE DEPARTMENT[701](cont'd)

payments at the rate of 5 percent. ~~State income tax is required to be withheld by payers in situations when federal income tax is being withheld from the nonwage payments.~~

a. Withholding from pension and annuity payments to residents. Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent that the recipients of the payments have not filed with the payers of the benefits election forms which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. ~~See paragraph 307.1(2)“h” for threshold amounts for withholding from payments of pensions, annuities, and other retirement incomes which are made on or after January 1, 2001.~~

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law or retirement distributions subject to the retirement income exclusion described in rule 701—302.47(422).

b. Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies. Payments to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits. However, no state income tax is to be withheld from the income tax payments described above to the extent those income tax payments are exempt from Iowa income tax. ~~See paragraph 307.1(2)“h” for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001.~~ Rule 701—302.47(422) provides more information about the retirement income exclusion.

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election for state income tax withholding, that election will remain in effect until a later election is made.

c. Withholding from payments to residents for supplemental unemployment compensation benefits and sick pay benefits. Income payments made for supplemental unemployment compensation benefits described in Section 3402(o)(2)(a) of the Internal Revenue Code and for sick pay benefits are subject to withholding of state income tax. In the case of supplemental unemployment compensation benefits, those benefits are treated as wages for purposes of state income tax withholding. Therefore, state income tax should be withheld from these payments when federal income tax is withheld. The amount of state income tax withholding should be determined by the withholding tables provided in the Iowa employers’ “Withholding Tax Guide.”

In the case of state income tax withholding for sick pay benefits paid by third-party payers in accordance with Section 3402(o)(1) of the Internal Revenue Code, state income tax is to be withheld from the benefits by the payer only if state income tax withholding is requested by the payee of the benefits. ~~However, payees of sick pay benefits should probably not request withholding from the benefits if the payees are eligible for the disability income exclusion authorized in Iowa Code section 422.7 and described in rule 701—302.22(422).~~ If withholding is requested by the payee, the withholding should be done at a 5 percent rate on the sick pay benefits. Once withholding is started, it should continue until such time as the payee requests that no state income tax be withheld. For sick pay benefits not paid by third-party payers, state income tax is required to be withheld since federal income tax is required to be withheld.

d. Voluntary state income tax withholding from unemployment benefit payments. Recipients of unemployment benefit payments described in Section 3402(p)(2) of the Internal Revenue Code may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual’s

REVENUE DEPARTMENT[701](cont'd)

election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

e. Withholding on lump-sum distributions from qualified retirement plans. For lump-sum distribution payments from qualified retirement plans made to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump-sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. ~~See paragraph 307.1(2)“h” for thresholds for withholding on lump-sum distributions issued on or after January 1, 2001.~~ Rule 701—302.47(422) provides more information about the retirement income exclusion. Iowa income tax is to be withheld from a lump-sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump-sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount if that amount is known by the payer. Note that in the case of a lump-sum distribution, the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

f. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas. State income tax from the nonwage payments made to Iowa residents may be withheld on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue. ~~See paragraph 307.1(2)“h” for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001.~~ When state income tax is being withheld based upon the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on Form IA W-4 which has been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W-4 form (Iowa employee's withholding allowance certificate) by the time a nonwage payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes Form IA W-4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

g. Withholding on distributions from qualified retirement plans that are not directly rolled over. ~~State~~ Other than distributions to payees who qualify for the retirement income exclusion, state income tax is to be withheld at a rate of 5 percent from the gross amount or taxable amount if known by the payer of the distribution made to Iowa residents if the distributions are not transferred directly to an IRA, Section 403(a) annuity or another qualified retirement plan. The distributions that are subject to state income tax withholding are those distributions that are subject to 20 percent withholding for federal income tax purposes. ~~See paragraph 307.1(2)“h” for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans which are made on or after January 1, 2001.~~ Rule 701—302.47(422) provides more information about the retirement income exclusion.

h. ~~Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans.~~ Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required

REVENUE DEPARTMENT[701](cont'd)

to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term “pensions and other retirement plans” includes all distributions of retirement benefits covered by the partial exemption described in rule 701—302.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is \$500 per month or less or if the taxable amount is \$500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—302.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is \$1,000 per month or less or if the taxable amount is \$1,000 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—302.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than \$500 per month but less than \$6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump sum payment from a qualified retirement plan if the lump sum payment is \$6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump sum payment is the only distribution from the retirement plan in the year.

ITEM 6. Amend rule **701—307.1(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 96.3, ~~99B.24~~ 99B.8, 99D.16, 99E.19, 99F.18, 99G.31, 422.5, 422.7, and 422.16.

ITEM 7. Amend subrule 307.3(5) as follows:

307.3(5) *Iowa W-4P—withholding certificate for pension or annuity payments.*

a. For payments made from pension plans, annuity plans, individual retirement accounts, or deferred compensation plans to residents of Iowa, payers of these retirement benefits are to use Form IA W-4P for withholding of state income tax from the benefits. Generally, state income tax is required to be withheld from payments of distributions from the retirement incomes described above when federal income tax is being withheld from the payments. However, no state income tax is required to be withheld to the extent the monthly payment amount is \$500 or less or the taxable amount per month is \$500 or less if the payee is eligible for the retirement benefits exclusion described in rule 701—302.47(422). In addition, no state income tax is required to be withheld to the extent the monthly payment amount is \$1,000 or less or the taxable amount per month is \$1,000 or less if the payee is married and eligible for the retirement benefits exclusion described in rule 701—302.47(422). Iowa income tax withholding is not required on payments of distributions from qualifying retirement plans if the payee is eligible for the retirement income exclusion described in rule 701—302.47(422). However, withholding at a rate of 5 percent is required if the payee is not eligible for the retirement income exclusion or if the distribution is from a plan that does not qualify for the retirement income exclusion.

b. Form IA W-4P is available from the department for payers of retirement benefits that intend to withhold at a rate of 5 percent from the payment amount or taxable payment amount after the \$6,000 to \$12,000 exclusion is considered. Note that the \$6,000 to \$12,000 exclusion is to be allocated to all retirement benefit payments made in the year and not just the first \$6,000 to \$12,000 in payments made in the year to an individual. If an individual receives retirement benefits and has not completed Form IA W-4P, the payer is directed to withhold Iowa income tax from the retirement benefit payment after a \$6,000 exclusion is allowed on an annual basis.

c. b. Payers of retirement benefits taxable in Iowa that want to use withholding formulas or tables to withhold state income tax instead of at the 5 percent rate may design their own IA W-4P withholding certificate form without approval of the department.

REVENUE DEPARTMENT[701](cont'd)

~~d.—The payers are not responsible for improper choices made by a payee in completion of the IA W-4P. However, payers cannot accept a request for exemption from the withholding of state income tax made by a payee if federal income tax is being withheld unless the payee is eligible for exemption from withholding.~~

ARC 7107C

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]

Notice of Intended Action

Proposing rulemaking related to regional industry sector partnerships and providing an opportunity for public comment

The Workforce Development Board and Workforce Development Center Administration Division hereby proposes to amend Chapter 7, “Iowa Workforce Investment Act Program,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and Iowa Code section 84A.15 as transferred by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and Iowa Code section 84A.15 as transferred by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

As part of the Workforce Development Department’s review of rules under Executive Order 10, the Department identified several instances where current rule 877—7.25(260H) duplicates statutory language and uses restrictive terms. Therefore, this rule is proposed to be rescinded.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on November 21, 2023. Comments should be directed to:

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

Brooke Axiotis
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.802.9425
Email: brooke.axiotis@iwd.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
10 to 11 a.m.

Capitol View Room
1000 East Grand Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.414.6800 or via email at april.stotz@iowa.gov at least 48 hours prior to the hearing date.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve rule **877—7.25(260H)**.

ARC 7108C

**WORKFORCE DEVELOPMENT BOARD AND WORKFORCE
DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]**

Notice of Intended Action

**Proposing rulemaking related to work-based learning
and providing an opportunity for public comment**

The Workforce Development Board and Workforce Development Center Administration Division hereby proposes to rescind Chapter 31, "Statewide Work-Based Learning Intermediary Network," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and Iowa Code section 84A.16 as transferred by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and Iowa Code section 84A.16 as transferred by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

As part of the Workforce Development Department's review of rules under Executive Order 10, the Department identified several instances where the current chapter duplicates statutory language and uses restrictive terms. Therefore, Chapter 31 is proposed to be rescinded.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on November 21, 2023. Comments should be directed to:

Brooke Axiotis
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.802.9425
Email: brooke.axiotis@iwd.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 21, 2023
9 to 10 a.m.

Capitol View Room
1000 East Grand Avenue
Des Moines, IA

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.414.6800 or via email at april.stotz@iowa.gov at least 48 hours prior to the hearing date.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **877—Chapter 31**.

ARC 7103C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to capital gain exclusion

The Revenue Department hereby amends Chapter 302, “Determination of Net Income,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14 and 422.68.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 422.7.

Purpose and Summary

Pursuant to Part IV of Executive Order 10, the Department was directed to propose Notice of Intended Action **ARC 7051C** to implement, in part, 2022 Iowa Acts, House File 2317. The Department now adopts this rulemaking to provide guidance as to how and when an employee-owner may make an election to exclude capital gain from the sale of qualifying capital stock in a qualifying corporation. The legislation allowed employee-owners of a qualified corporation to exclude the capital gain from the sale of qualifying capital stock.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 26, 2023, as **ARC 7051C**.

A comment was received asking questions about how the deduction worked. These questions were already covered by the statute or rule and were answered directly.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on October 4, 2023.

Fiscal Impact

This rulemaking has no known fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement. The Department projects that the stock capital gain income tax exclusion will reduce tax liability and General Fund revenue by the following amounts: FY 2024 = \$4.0 million; FY 2025 = \$7.6 million; FY 2026 = \$10.3 million; FY 2027 = \$9.0 million; FY 2028 = \$9.5 million. Fiscal impacts beyond FY 2028 are projected to continue, increasing each year at the rate of inflation.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

REVENUE DEPARTMENT[701](cont'd)

or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on December 6, 2023.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** rule 701—302.41(422):

701—302.41(422) Capital gain exclusion for elected employee-owned stock in a qualified corporation.

302.41(1) *In general.* Employee-owners may make a single, irrevocable lifetime election to exclude from net income the net capital gain from the sale or exchange of capital stock from a qualified corporation at the following rates:

- a. For tax years beginning in the 2023 calendar year, 33 percent.
- b. For tax years beginning in the 2024 calendar year, 66 percent.
- c. For tax years beginning on or after January 1, 2025, 100 percent.

302.41(2) *Definitions.* Unless otherwise indicated in this rule or required by the context, all words and phrases used in this rule that are defined under Iowa Code section 422.7(43) shall have the same meaning as provided to them under that Iowa Code section.

302.41(3) *Qualifying for the exclusion.* For the employee-owner's sale or exchange to qualify for the exclusion in this rule, the capital stock must be acquired by the employee-owner while employed and on account of employment with a qualified corporation.

a. *While employed.* The capital stock must have been acquired while the employee-owner was employed by the qualifying corporation. Capital stock received as compensation is acquired by the employee-owner while employed. Capital stock acquired from a stock right, stock warrant, or stock option is only acquired by the employee-owner while employed if such right, warrant, or option is exercised while the employee-owner is employed by the qualifying corporation.

b. *On account of employment.* For capital stock to have been acquired on account of employment, the employee-owner must have acquired the capital stock in a manner only available to employees of the qualified corporation. Capital stock acquired at formation in exchange for capital contribution is not acquired on account of employment.

c. *Holding period.* To qualify for the exclusion, the employee-owner must own the capital stock for at least ten cumulative years. If the employee-owner owns any capital stock in the qualified corporation for at least ten cumulative years, then every share of the employee-owner's capital stock in that qualified corporation is considered to meet the holding period requirement. For stock rights, stock warrants, or stock options, the holding period does not begin until the right, warrant, or option is exercised.

302.41(4) *Electing capital stock for exclusion.*

a. *General rule.* The employee-owner shall make the election to exclude capital gain from the sale of capital stock of a qualified corporation on a form prescribed by the department with the employee-owner's original Iowa income tax return for the tax year in which the election is made. The form shall be available on the department's website. To qualify for the exclusion, the employee-owner must include all information required by the form.

b. *Election when sale or exchange takes place over multiple transactions.* The election applies to all subsequent sales or exchanges of capital stock of the same qualified corporation of which the initial election was made, within 15 years of the date the election was made. The employee-owner shall include the form prescribed by the department with the employee-owner's Iowa income tax return when claiming the exclusion for a subsequent sale or exchange.

REVENUE DEPARTMENT[701](cont'd)

c. The election can only be made once. An employee-owner may only make one lifetime election to exclude the qualifying capital stock of a single qualifying corporation under this rule. The election is irrevocable once made.

302.41(5) Election by a party other than the employee-owner.

a. Election upon death of the employee-owner. If the employee-owner dies after having sold or exchanged qualifying capital stock without having made an election, the surviving spouse or, if there is no surviving spouse, the personal representative of the employee-owner's estate may make a qualifying election in the manner described in subrule 302.41(4) for the tax year in which the employee-owner died.

b. Inter vivos transfer of qualifying capital stock. After the election described in this rule has been made, the election applies to capital stock transferred from the employee-owner to the employee-owner's spouse as an inter vivos gift or to an inter vivos trust primarily for the benefit of the employee-owner's spouse. Capital stock transferred through a will or testamentary trust does not qualify for this exclusion. The election only applies if the spouse was married to the employee-owner on the date of the sale or exchange or the date of death of the employee-owner.

This rule is intended to implement Iowa Code section 422.7.

[Filed 10/4/23, effective 12/6/23]

[Published 11/1/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/23.