



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rule Making 2020

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
12	Thursday, November 12, 2020	December 2, 2020
13	Friday, November 27, 2020	December 16, 2020
14	Wednesday, December 9, 2020	December 30, 2020

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****

NOTE: See also the Advisory Notice on page 912.

ADMINISTRATIVE SERVICES DEPARTMENT[11]

<p>Waivers, 9.1, 9.4, 9.6, 9.9, 9.10, 9.13, 100.1, 117.21(1), 118.16(1) IAB 11/4/20 ARC 5243C</p>	<p>Via Google Meet: meet.google.com/omm-iprc-ubi Via phone: +1.651.571.1274 PIN: 568-259-031# Mute phones or microphones upon entering the meeting</p>	<p>November 24, 2020 10 to 11 a.m.</p>
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ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

<p>Update of rules, rescind ch 3; amend chs 4 to 6, 8, 15 IAB 10/21/20 ARC 5236C</p>	<p>Via teleconference Conference line: 866.685.1580 Conference code: 2550409115</p>	<p>November 13, 2020 2 to 2:30 p.m.</p>
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LABOR SERVICES DIVISION[875]

<p>Federal occupational safety and health standards for beryllium construction, cranes and derricks—adoption by reference, 10.4, 26.1 IAB 10/21/20 ARC 5234C</p>	<p>Via conference call Dial: 312.626.6799 Meeting ID number: 933 8268 9446 Pass code: 881357</p>	<p>November 12, 2020 10 a.m. (If requested)</p>
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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

<p>Licensure; eligibility determinations; waivers; petitions for rule making; public records, amend chs 1, 3 to 7, 18, 20, 22, 25, 26; adopt ch 13 IAB 11/4/20 ARC 5261C</p>	<p>Small Conference Room, Third Floor 200 E. Grand Ave. Des Moines, Iowa</p>	<p>November 24, 2020 10 to 11 a.m.</p>
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TRANSPORTATION DEPARTMENT[761]

<p>Public records—request for records, confidentiality, copies, 4.3, 4.9 IAB 11/4/20 ARC 5246C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>November 30, 2020 1 to 2 p.m. (If requested)</p>
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<p>Adopt-a-highway program—online information, sponsors, 121.2, 121.3, 121.5, 121.6(1) IAB 11/4/20 ARC 5245C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>November 30, 2020 9 to 10 a.m. (If requested)</p>
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<p>Rights-of-way; primary road extensions, 150.2, 150.3, 150.5(1) IAB 11/4/20 ARC 5244C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>November 30, 2020 10:30 to 11:30 a.m. (If requested)</p>
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<p>Special registration plates, 401.2(1)“b,” 401.4, 401.6(2)“a,” 401.14 IAB 10/21/20 ARC 5232C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>November 12, 2020 10 to 11 a.m. (If requested)</p>
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Salvage motor vehicles, 405.1, 405.2, 405.3(3), 405.6(1)“b,” 405.7, 405.8, 405.10(1), 405.15 IAB 10/21/20 ARC 5233C	Via conference call Contact Tracy George Email: tracy.george@iowadot.us	November 12, 2020 9 to 10 a.m. (If requested)
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UTILITIES DIVISION[199]

Restoration of agricultural lands during and after pipeline construction, ch 9 IAB 11/4/20 ARC 5266C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	December 1, 2020 1:30 to 4:30 p.m.
Electric lines, 11.2, 11.3(3), 11.5(1)“d”(6) IAB 10/7/20 ARC 5217C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	December 3, 2020 9 a.m. to 12 noon (If requested)
Electric vehicle charging service, 20.20 IAB 11/4/20 ARC 5267C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	December 21, 2020 1 to 4 p.m.

The following list will be updated as changes occur.

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

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

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

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ARC 5243C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

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

The Administrative Services Department hereby proposes to amend Chapter 9, "Waivers," Chapter 100, "Capitol Complex Operations," Chapter 117, "Procurement of Goods and Services of General Use," and Chapter 118, "Purchasing Standards for Service Contracts," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 8A.104, 17A.3 and 17A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A as amended by 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments update four chapters in the Department's rules in the Iowa Administrative Code in accordance with changes included in 2020 Iowa Acts, House File 2389, section 10. The changes call for deletions of the word "variance" when the word is used in relation to "waiver." Amendments are also proposed for the submission of information regarding waivers on the Legislative Services Agency's Internet site.

Fiscal Impact

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

Jobs Impact

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

Waivers

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Tami Wiencek
Department of Administrative Services
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Phone: 515.725.2017
Fax: 515.281.6140
Email: tami.wiencek@iowa.gov

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Public Hearing

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

November 24, 2020
10 to 11 a.m.

Google Meet — meet.google.com/omm-iprc-ubi
+1.651.571.1274
PIN 568-259-031#

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **11—9.1(17A,8A)**, definition of “Waiver or variance,” as follows:

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

ITEM 2. Amend rule 11—9.4(17A,8A) as follows:

11—9.4(17A,8A) Granting a waiver. In response to a petition completed pursuant to rule 11—9.6(17A,8A), the director may, in the director's sole discretion, issue an order waiving in whole or in part the requirements of a rule.

9.4(1) Criteria for waiver ~~or variance~~. A waiver may be granted if the director finds based on clear and convincing evidence each of the following:

- a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

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

9.4(2) Special waiver ~~or variance~~ of rules not precluded. These rules shall not preclude the director from granting waivers ~~or variances~~ in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so; the director deems it appropriate to do so; and the director is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

9.4(3) Procurement-related waiver ~~or variance~~. The director may waive a rule ~~or grant a variance~~ due to noncompliance with a stated requirement in a procurement, sale, or auction if the request meets all of the following criteria:

- a. The request is made prior to the issuance of a notice of intent to award a contract or the finalization of a sale.
- b. The waiver ~~or variance~~ will tend to promote competition rather than inhibit or reduce competition.
- c. The waiver ~~or variance~~ will not materially alter the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.
- d. The noncompliance with the stated requirement is correctable (if correction is necessary) without materially or substantially altering the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.
- e. No other person who submits an offer, a response to an invitation to bid or a response to a request for proposals is materially or substantially harmed by the waiver ~~or variance~~. A person shall not be deemed to have been harmed if the waiver ~~or variance~~ merely increases competition.
- f. Fundamental notions of good faith and fair dealing favor the issuance of a waiver ~~or variance~~.
- g. The waiver ~~or variance~~ will not result in unreasonable delay in the procurement, sale or auction and will not interfere with certainty or finality in the procurement, sale or auction.

If the stated terms of the procurement, sale or auction permit or authorize waiver ~~or variance~~ from the stated terms, the director may waive ~~or vary~~ the stated terms without regard to subrule 9.4(1).

9.4(4) Special waiver ~~or variance~~ not permitted. The compensation rates for publication in a newspaper for any notice, order or citation or other publication required or allowed by law as determined by the state printing administrator pursuant to Iowa Code section 618.11 shall not be waived ~~or varied~~. The procedure established in this chapter does not apply to waiver ~~or variance~~ of contractual terms or conditions; contracts shall be waived ~~or varied~~ only upon their own terms. These rules do not apply to the Terrace Hill commission established in Iowa Code section 8A.326 or rules adopted by the commission unless these rules are adopted by the Terrace Hill commission.

ITEM 3. Amend rule 11—9.6(17A,8A) as follows:

11—9.6(17A,8A) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester:

1. to 9. No change.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

ITEM 4. Amend rule 11—9.9(17A,8A) as follows:

11—9.9(17A,8A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver ~~or variance~~ of rule filed within a contested case; (2) when the director so provides by rule or order; or (3) when a statute so requires. Prior to issuing an order granting or denying a proposed waiver, the department shall determine whether or not the facts alleged in the proposed waiver are accurate and complete.

ITEM 5. Amend rule 11—9.10(17A,8A) as follows:

11—9.10(17A,8A) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope (including any conditions) and duration of the waiver if one is issued.

9.10(1) to 9.10(3) No change.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

9.10(4) Administrative deadlines. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

9.10(5) and 9.10(6) No change.

9.10(7) Time for ruling. The director shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date or the department, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition is filed in an appeal, the director shall grant or deny the petition no later than the time at which the final decision in that appeal is issued.

9.10(8) and 9.10(9) No change.

ITEM 6. Amend rule 11—9.13(17A,8A) as follows:

11—9.13(17A,8A) Summary reports Submission of waiver information. ~~Semiannually~~ Within 60 days of granting or denying a waiver, the director shall prepare a summary report identifying ~~make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the director's actions on waiver requests. If practicable, the report submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 7. Amend rule ~~11—100.1(8A)~~, definition of “Waiver,” as follows:

“*Waiver*” means a waiver ~~or variance~~ as defined in 11—Chapter 9, Iowa Administrative Code.

ITEM 8. Amend subrule 117.21(1) as follows:

117.21(1) Definition. For the purpose of this chapter, a “waiver ~~or variance~~” means an action by the director that suspends, in whole or in part, the requirements or provisions of a rule in this chapter as applied to a state agency when the state agency establishes good cause for a waiver ~~or variance~~ of the rule. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 9. Amend subrule 118.16(1) as follows:

118.16(1) For the purpose of this chapter, a “waiver ~~or variance~~” means an action by the director of the department that suspends, in whole or in part, the requirements or provisions of a rule in this chapter as applied to a state agency when the state agency establishes good cause for a waiver ~~or variance~~ of the rule. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ARC 5242C

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

Proposing rule making related to administrative actions unit and providing an opportunity for public comment

The Alcoholic Beverages Division hereby proposes to amend Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” and Chapter 10, “Contested Cases,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 17A and section 123.10.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A and 123.

Purpose and Summary

The proposed amendments update rules related to the policies and procedures of the Division's Administrative Actions Unit and are intended to increase the effectiveness and efficiency of the Unit. These amendments remove the requirement that a licensee or permittee petition the Division for a waiver in addition to petitioning the Department of Inspections and Appeals for a waiver when the licensee's or permittee's business establishment does not meet the bathroom requirements of 481—subrule 31.1(12). These amendments also clarify which entities have authority to file hearing complaints against licensees, permittees, or certificate of compliance holders found to be in violation of applicable laws or rules. These amendments extend the statute of limitations on requesting a contested case from one year to three years. Finally, these amendments clarify the allowable means of filing or delivering certain documents in a contested case. Other nonsubstantive clarifying amendments are also proposed.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Tyler Ackerson
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, Iowa 50021
Email: ackerson@iowaabd.com

Public Hearing

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 185—4.2(123) as follows:

185—4.2(123) General requirements. All applicants for ~~liquor control~~ licenses, ~~wine~~ permits, or ~~beer~~ permits certificates of compliance shall comply with the following requirements, where applicable, prior to receiving a ~~liquor~~ license, ~~wine~~ permit, or ~~beer~~ permit certificate of compliance.

4.2(1) Cleanliness of premises. The interior and exterior of ~~all the~~ licensed premises shall be kept clean, free of litter or rubbish, painted and in good repair. Licensees and permittees shall at all times keep and maintain their respective premises in compliance with the laws, orders, ordinances and rules of the state, county and city health and fire departments, and the Iowa department of inspections and appeals.

4.2(2) Toilet facilities. All licensees and permittees who mix, serve, or sell alcoholic ~~liquor, wine, or beer~~ beverages for consumption on the licensed premises shall provide for their patrons adequate, conveniently located ~~separate~~ indoor or outdoor toilet facilities ~~for men and women, which shall conform to~~. Compliance with county, city, and department of inspections and appeals' rules and regulations regarding toilet facilities, including any waivers granted by those authorities, shall constitute compliance with this rule. ~~In case of outdoor~~ Outdoor toilet facilities, they shall be approved by the department of inspections and appeals and the local approving authority where the licensed premises is located.

4.2(3) Water. All licensed ~~establishments~~ premises shall be equipped with hot and cold running water from a source approved by an authorized health department.

4.2(4) Financial standing and reputation. A local authority or the administrator may consider an applicant's financial standing and good reputation in addition to the other requirements and conditions for obtaining a ~~liquor control~~ license, ~~wine or beer~~ permit, or certificate of compliance, and the local authority or the administrator shall disapprove or deny an application for a ~~liquor control~~ license, ~~wine or beer~~ permit, or certificate of compliance if the applicant fails to demonstrate that the applicant complies with the lawful requirements and conditions for holding the license, permit, or certificate of compliance.

a. In evaluating an applicant's "financial standing," the local authority or the administrator may consider such factors as, but not limited to, the following: ~~An applicant's "financial standing" may include, but is not limited to, verified~~

(1) Verified source(s) of financial support and adequate operating capital for the applicant's proposed establishment, ~~a.~~

(2) A record of ~~prompt payment of local or state~~ timely submission of all required federal, state, or local tax returns or forms and prompt payment of all taxes due, ~~a.~~

(3) A record of prompt payment to the local authority of fees or charges made by a local authority for municipal utilities or other municipal services incurred in conjunction with the proposed establishment, ~~and a.~~

(4) A record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123.

(5) A record of maintaining, and providing prompt payment for, dramshop liability insurance coverage as required pursuant to Iowa Code chapter 123.

(6) A record of prompt payment for license, permit, or certificate fees.

(7) A record of prompt payment for alcoholic liquor orders placed with the division.

b. In evaluating an applicant's "good reputation," the local authority or the administrator may consider such factors as, but not limited to, the following:

(1) A pattern or practice of sales of alcoholic beverages to ~~19 and 20 year old~~ persons under the legal age for which the licensee or permittee, or the licensee's or permittee's agents or employees, have pled or have been found guilty,

(2) A pattern and or practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued, ~~sales.~~

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

(3) Sales to intoxicated persons, licensee.

(4) Licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol, and the recency of such convictions under laws relating to operating a motor vehicle while under the influence of drugs or alcohol, licensee.

(5) Licensee or permittee misdemeanor convictions, and the recency of the misdemeanor such convictions.

(6) A pattern or practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of failing to cooperate with the department of public safety, the division, the county attorney, the county sheriff and sheriff's deputies, the city police department, or the city attorney.

(7) A pattern or practice by the licensee or permittee of violating local ordinances established by the local authority pursuant to Iowa Code section 123.39(2).

(8) A pattern or practice by the licensee or permittee of failing to report any change in the ownership or interest of the business pursuant to Iowa Code section 123.39(2) "b"(3).

This rule is intended to implement Iowa Code sections ~~123.3(11), 123.21(11)~~ 123.3(40) and ~~123.30~~ 123.10(11).

ITEM 2. Amend rule 185—10.2(17A) as follows:

185—10.2(17A) Definitions. Except where otherwise specifically defined by law:

"Administrator" means the administrator of the alcoholic beverages division of the department of commerce.

"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 1998 Iowa Acts, chapter 1202, section 14 pursuant to Iowa Code section 17A.10A.

"Division" means the alcoholic beverages division of the department of commerce.

"Hearing complaint" means a statement in writing filed by, or on behalf of, the division, a local authority having jurisdiction, or the department of public safety that sets 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. The hearing complaint shall be in sufficient detail to enable the preparation of the respondent's defense.

"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.

"Local authority" means "local authority" as defined in Iowa Code section 123.3(30).

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrator, the administrator's designee, or an administrative law judge available under 1998 Iowa Acts, chapter 1202, section 3, and Iowa Code section 123.39(1a) from the department of inspections and appeals.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the administrator did not preside.

ITEM 3. Amend rule 185—10.4(123,17A) as follows:

185—10.4(123,17A) Statute of limitations. Requests for a contested case proceeding alleging a violation of Iowa Code chapter 123 must be filed with the division or the local authority within ~~one year~~ three years from the date of the alleged violation or the date of conviction for the violation, whichever is later.

ITEM 4. Amend rule 185—10.5(17A) as follows:

185—10.5(17A) Requests for a contested case proceeding.

10.5(1) Any person claiming an entitlement to a contested case proceeding shall file a written request 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 agency action in question.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

10.5(2) The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed 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, and include a short and plain statement of the issues of material fact in dispute.

ITEM 5. Amend subrule 10.6(1) as follows:

10.6(1) *Delivery.* Delivery of the 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. Certified mail, return receipt requested; or
- ~~c. First-class mail; or~~
- ~~d. c.~~ Publication, as provided in the Iowa Rules of Civil Procedure.

ITEM 6. Amend rule 185—10.7(17A) as follows:

185—10.7(17A) Presiding officer.

10.7(1) *Administrative law judge.* The administrator may appoint an administrative law judge as presiding officer in all contested case hearings pursuant to ~~1998 Iowa Acts, chapter 1202, section 3, and Iowa Code section 123.39(1a)~~ sections 123.32 and 123.39.

10.7(2) *Appeal.* Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency administrator. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

10.7(3) No change.

ITEM 7. Amend subrules 10.10(2) and 10.10(4) as follows:

10.10(2) *Personally investigated.* 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 agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 ~~as amended by 1998 Iowa Acts, chapter 1202, section 19,~~ and subrules 10.10(3) and 10.23(9).

10.10(4) *Motion asserting disqualification.*

a. If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.10(1), the party shall file a motion supported by an affidavit pursuant to ~~1998 Iowa Acts, chapter 1202, section 19(7)~~ Iowa Code section 17A.17. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

b. 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 must establish the grounds by the introduction of evidence into the record.

c. If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 185—10.25(17A) and seek a stay under rule 185—10.29(17A).

ITEM 8. Amend rule 185—10.12(17A) as follows:

185—10.12(17A) Pleadings.

10.12(1) No change.

10.12(2) *Petition Hearing complaint.*

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

a. The division, a local authority having jurisdiction, or the department of public safety may give written notice of the cause for action in the form of a hearing complaint and an opportunity for a hearing to a licensee, permittee, or holder of a certificate of compliance for any of the following:

(1) A violation of Iowa Code chapter 123.

(2) A violation of the division's administrative rules.

(3) Failure to comply with an order issued by the division.

(4) Failure to fully cooperate during an investigation, audit, or inspection of the licensee, permittee, or certificate holder, including failure to respond to an inquiry within ten business days of the date of mailing by certified mail, return receipt requested, of a written request for information or records directed to the licensee's, permittee's, or certificate holder's last address on file with the agency.

b. A ~~petition~~ hearing complaint shall state in separately numbered paragraphs the following:

~~a.~~ (1) The persons or entities on whose behalf the ~~petition~~ hearing complaint is filed;

~~b.~~ (2) The particular provisions of statutes and rules involved;

~~c.~~ (3) The relief demanded and the facts and law relied upon for such relief; and

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

10.12(3) Answer.

a. An answer shall be filed within 20 days of service of the ~~petition~~ hearing complaint unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

b. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

c. An answer shall state the name, address, and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

d. Any allegation in the ~~petition~~ hearing complaint not denied in the answer is considered admitted. 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.

10.12(4) Amendment. Any notice of hearing, ~~petition~~, hearing complaint, or other charging document 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.

ITEM 9. Amend rule 185—10.13(17A) as follows:

185—10.13(17A) Service and filing of pleadings and other papers.

10.13(1) No change.

10.13(2) Service—how made. Service upon a party represented by an attorney shall 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, so long as there is proof of mailing.

10.13(3) No change.

10.13(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the division, 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. Parties may file documents with the division by electronic transmission. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the division.

10.13(5) and 10.13(6) No change.

ITEM 10. Amend paragraph **10.15(1)“a”** as follows:

a. Agency subpoenas. An agency subpoena shall be issued to a party on request. Subpoenas may compel the attendance of witnesses at deposition or hearing and the production of books, papers, records,

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

and other real evidence unless they are otherwise expressly exempt from disclosure by Constitution or statute. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the presiding officer upon a written request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

ITEM 11. Amend subrule 10.16(5) as follows:

10.16(5) Motions for summary judgment.

a. Motions for summary judgment shall comply with the requirements of Iowa ~~Rule~~ Rules of Civil Procedure ~~237~~ 1.981, 1.982, and 1.983 and shall be subject to disposition according to the requirements of ~~that rule~~ those rules 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.

b. Motions for summary judgment must be filed and served at least 45 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 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 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 185—10.28(17A) and appeal pursuant to rule 185—10.27(17A).

ITEM 12. Amend subrule 10.21(4) as follows:

10.21(4) Admission and examination. 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 shall be appropriately marked and be made part of the record.

ITEM 13. Amend subrule 10.22(6) as follows:

10.22(6) Good cause defined. “Good cause” for purposes of this rule shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure ~~236~~ 1.971.

ITEM 14. Amend subrule 10.29(2) as follows:

10.29(2) When granted. In determining whether to grant a stay, the administrator shall consider the following factors ~~listed in 1998 Iowa Acts, chapter 1202, section 23(5c):~~

a. The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

b. The extent to which the applicant will suffer irreparable injury if relief is not granted.

c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

d. The extent to which the public interest relied on by the agency is sufficient to justify the agency’s action in the circumstances.

ITEM 15. Amend subrule 10.31(2) as follows:

10.31(2) Issuance of order.

a. No change.

b. Service. The written emergency adjudicative order shall 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 agency; or

~~(3) Certified mail to the last address on file with the agency;~~

~~(4) First class mail to the last address on file with the agency; or~~

~~(5)~~ (3) 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.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

c. No change.

ITEM 16. Adopt the following new rule 185—10.32(17A):

185—10.32(17A) Informal settlement. A party to a controversy that may culminate or has culminated in contested case proceedings may attempt informal settlement by complying with the procedures set forth in this rule. No party shall be required to settle the controversy or contested case by submitting to informal settlement procedures.

10.32(1) Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, including findings of facts.

10.32(2) When signed by the parties and approved by the administrator or the administrator's designee, a settlement shall represent final disposition of the matter.

10.32(3) A proposed settlement which is not accepted or signed by the parties and the administrator or the administrator's designee shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

This rule is intended to implement Iowa Code section 17A.10.

ITEM 17. Amend **185—Chapter 10**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ARC 5241C

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

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

The Alcoholic Beverages Division hereby proposes to amend Chapter 19, "Waivers from Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.9A and 123.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments revise the Division's rules regarding uniform waiver and variance procedures. In 2020, the Legislature passed House File 2389, which amends Iowa Code chapter 17A to remove the term "variance" and ensures that agencies' rules chapters about waiver procedures refer only to "waivers." The proposed amendments reflect the changes made by House File 2389 and revise the Division's existing rules for waivers and variances to refer only to waiver of administrative rules.

Fiscal Impact

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

Jobs Impact

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

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Tyler Ackerson
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, Iowa 50021
Email: ackerson@iowaabd.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 185—19.1(17A) as follows:

185—19.1(17A) Scope. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the division. The intent of this chapter is to allow persons to seek exception to the application of rules adopted by the division.

19.1(1) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means an action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

19.1(2) No change.

ARC 5264C

DENTAL BOARD[650]

Notice of Intended Action

**Proposing rule making related to clinical examinations on manikins
and providing an opportunity for public comment**

The Dental Board hereby proposes to amend Chapter 11, “Licensure to Practice Dentistry or Dental Hygiene,” and Chapter 12, “Dental and Dental Hygiene Examinations,” Iowa Administrative Code.

DENTAL BOARD[650](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 147.3, 147.29, 147.34 and 147.36 and chapter 153.

Purpose and Summary

The proposed amendments would allow applicants for a dental license to complete clinical examinations on manikins for the purposes of licensure in Iowa. These amendments also update the language regarding successful passage of examinations for dental and dental hygiene applicants.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, there is no impact on jobs because the amendments apply to requirements for licensure and would provide additional opportunities for meeting those requirements.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 650—7.4(17A,147,153).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on November 30, 2020. Comments should be directed to:

Iowa Dental Board
400 S.W. Eighth Street, Suite D
Des Moines, Iowa 50309
Phone: 515.281.3248
Fax: 515.281.7969
Email: IDB@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

DENTAL BOARD[650](cont'd)

The following rule-making actions are proposed:

ITEM 1. Amend subrule 11.2(2) as follows:

11.2(2) Applications for licensure must be filed with the board along with:

a. and *b.* No change.

c. Documentation of passage of national dental examination. Evidence of ~~attaining a grade of at least 75 percent on successful passage of~~ the examination administered by the Joint Commission on National Dental Examinations.

d. Documentation of passage of a clinical examination. Successful passage of a board-approved clinical examination within the previous five-year period.

~~(1) Successful passage of a board-approved clinical examination within the previous five-year period with a grade of at least 75 percent.~~

~~(2) (1)~~ The following patient-based regional clinical examinations are approved by the board for purposes of licensure by examination: the Central Regional Dental Testing Service, Inc. examination as administered by the Central Regional Dental Testing Service, Inc. (CRDTS), the Western Regional Examining Board examination as administered by the Western Regional Examining Board (WREB), the Southern Regional Testing Agency, Inc. examination as administered by the Southern Regional Testing Agency, Inc. (SRTA), and the American Board of Dental Examiners, Inc. examination as administered by the Commission on Dental Competency Assessments (CDCA) and the Council of Interstate Testing Agencies, Inc. (CITA).

(2) The following manikin-based regional clinical examinations are approved by the board for purposes of licensure by examination: the Central Regional Dental Testing Service, Inc. examination as administered by the Central Regional Dental Testing Service, Inc. (CRDTS), and the American Board of Dental Examiners, Inc. examination as administered by the Commission on Dental Competency Assessments (CDCA).

(3) Beginning January 1, 2018, the 2014 California portfolio examination is approved by the board for the purposes of licensure by examination. To be eligible for licensure on the basis of portfolio examination, an applicant must be a student at the University of Iowa College of Dentistry or have graduated from the University of Iowa College of Dentistry within one year of the date of application.

e. to *i.* No change.

ITEM 2. Amend subrule 11.3(2) as follows:

11.3(2) Applications must be filed with the board along with:

a. No change.

b. Evidence of ~~attaining a grade of at least 75 percent on the examination~~ successful passage of the Joint Commission on National Dental Examinations or evidence of attaining a grade of at least 75 percent on a written examination during the last ten years that is comparable to the examination given by the Joint Commission on National Dental Examinations. Any dentist who has lawfully practiced dentistry in another state or territory for five years may be exempted from presenting this evidence.

c. and *d.* No change.

e. Evidence that the applicant has met at least one of the following:

(1) Has less than three consecutive years of practice immediately prior to the filing of the application and evidence of ~~attaining a grade of at least 75 percent on successful passage of~~ a board-approved clinical examination pursuant to subrule 11.2(2) within the previous five-year period. ~~The following regional examinations are approved by the board for purposes of licensure by credentials: the Central Regional Dental Testing Service, Inc. examination as administered by the Central Regional Dental Testing Service, Inc. (CRDTS), the Western Regional Examining Board examination as administered by the Western Regional Examining Board (WREB), the Southern Regional Testing Agency, Inc. examination as administered by the Southern Regional Testing Agency, Inc. (SRTA), the American Board of Dental Examiners, Inc. examination as administered by the Commission on Dental Competency Assessments (CDCA) and the Council of Interstate Testing Agencies, Inc. (CITA), and the 2014 California portfolio examination; or~~

DENTAL BOARD[650](cont'd)

(2) Has for three consecutive years immediately prior to the filing of the application been in the lawful practice of dentistry in such other state, territory or district of the United States.

f. to k. No change.

ITEM 3. Amend subrule 11.5(2) as follows:

11.5(2) Applications for licensure must be filed with the dental hygiene committee along with:

a. and b. No change.

c. *Documentation of passage of national dental hygiene examination.* Evidence of ~~attaining a grade of at least 75 percent on~~ successful passage of the examination administered by the Joint Commission on National Dental Examinations.

d. *Documentation of passage of a regional clinical examination.*

(1) Successful passage of a patient-based regional clinical examination within the previous five-year period ~~with a grade of at least 75 percent.~~

(2) The following regional examinations are approved by the board for purposes of licensure by examination: the Central Regional Dental Testing Service, Inc. examination as administered by the Central Regional Dental Testing Service, Inc. (CRDTS), the Western Regional Examining Board examination as administered by the Western Regional Examining Board (WREB), the Southern Regional Testing Agency, Inc. examination as administered by the Southern Regional Testing Agency, Inc. (SRTA), and the American Board of Dental Examiners, Inc. examination as administered by the Commission on Dental Competency Assessments (CDCA) and the Council of Interstate Testing Agencies, Inc. (CITA).

e. to i. No change.

ITEM 4. Amend subrule 11.6(2) as follows:

11.6(2) Applications must be filed with the dental hygiene committee along with:

a. Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the dental hygiene committee.

b. Evidence of ~~attaining a grade of at least 75 percent on~~ successful passage of the examination of the Joint Commission on National Dental Examinations ~~or evidence of attaining a grade of at least 75 percent on a written examination that is comparable to the examination given by the Joint Commission on National Dental Examinations.~~ Any dental hygienist who has lawfully practiced dental hygiene in another state or territory for five or more years may be exempted from presenting this evidence.

c. and d. No change.

e. Evidence that the applicant has met at least one of the following:

(1) Has less than three consecutive years of practice immediately prior to the filing of the application and evidence of ~~attaining a grade of at least 75 percent on~~ successful passage of a regional clinical examination within the previous five-year period. The following regional examinations are approved by the board for purposes of licensure by examination: the Central Regional Dental Testing Service, Inc. examination as administered by the Central Regional Dental Testing Service, Inc. (CRDTS), the Western Regional Examining Board examination as administered by the Western Regional Examining Board (WREB), the Southern Regional Testing Agency, Inc. examination as administered by the Southern Regional Testing Agency, Inc. (SRTA), and the American Board of Dental Examiners, Inc. examination as administered by the Commission on Dental Competency Assessments (CDCA) and the Council of Interstate Testing Agencies, Inc. (CITA); or

(2) Has for three consecutive years immediately prior to the filing of the application been in the lawful practice of dental hygiene in such other state, territory or district of the United States.

f. to k. No change.

ITEM 5. Amend rule 650—11.7(147,153) as follows:

650—11.7(147,153) Dental hygiene application for local anesthesia permit. A licensed dental hygienist may administer local anesthesia provided the following requirements are met:

1. The dental hygienist holds a current local anesthesia permit issued by the board ~~of dental examiners.~~

DENTAL BOARD[650](cont'd)

2. and 3. No change.

11.7(1) to 11.7(4) No change.

This rule is intended to implement Iowa Code sections 147.10 and 147.80 and chapter 153.

ITEM 6. Amend rule 650—12.1(147,153) as follows:

650—12.1(147,153) Clinical examination procedure for dentistry.

12.1(1) *Compliance with regional clinical examination testing requirements and procedures.* Examinees shall meet the requirements for testing and follow procedures established by each respective testing agency. Examinees must take all parts offered by the respective testing agency.

12.1(2) *Scoring requirements.* The examinee must attain a grade of not less than 75 percent passing score on each clinical portion of the examination and on the written portion of the examination.

~~**12.1(3)** *Compliance with performance clinical operations requirements.* Each examinee shall be required to perform such clinical operations as may be required by each respective testing agency, for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dentistry.~~

ITEM 7. Amend rule 650—12.4(147,153) as follows:

650—12.4(147,153) Clinical examination procedure for dental hygiene.

12.4(1) *Compliance with regional clinical examination testing requirements and procedures.* Examinees shall meet the requirements for testing and follow the procedures established by each respective testing agency. Examinees must take all parts offered by the respective testing agency.

12.4(2) *Scoring requirements.* The examinee must attain a grade of not less than 75 percent passing score on each clinical portion of the examination and on the written portion of the examination.

~~**12.4(3)** *Practical demonstrations.* Each examinee shall be required to perform such practical demonstrations as may be required by each respective testing agency for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dental hygiene.~~

ARC 5262C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

**Proposing rule making related to adoption of 2017 food code
and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 30, “Food and Consumer Safety,” and Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 137F.2(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2(1).

Purpose and Summary

The proposed amendments adopt by reference the 2017 Food and Drug Administration (FDA) Food Code, update associated references to the Food Code, and make modifications to the adoption of the 2017 FDA Food Code with respect to food production manager certification requirements. The primary effects of adopting the 2017 FDA Food Code include changes to when a certified food protection manager is required (2017 FDA Food Code rule 2-201.12); requiring a person in charge to ensure food employees are routinely monitoring food temperatures (2017 FDA Food

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

Code rule 2-103.11); and requiring a single-use glove to be worn over a bandage, finger cot, or finger stall (2017 FDA Food Code rule 2-401.13). The remaining effects of adopting the 2017 FDA Food Code generally provide clarification of existing requirements and editorial content. The FDA's summary of the changes in the 2017 Food Code and the Supplement to the 2017 Food Code may be found at: www.fda.gov/food/fda-food-code/summary-changes-fda-food-code-2017 and www.fda.gov/media/133749/download.

The proposed amendments also correct an erroneous reference to Iowa Code chapter 137C.

Prior to submission of this Notice, the Department distributed for comment a draft of these proposed amendments to industry associations, local contracting health departments, and food safety educators.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

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

ITEM 1. Amend rule 481—30.2(10A,137C,137D,137F), introductory paragraph, as follows:

481—30.2(10A,137C,137D,137F) Definitions. If both the ~~2013~~ 2017 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137D,137F) define a term, the definition in rule 481—30.2(10A,137C,137D,137F) shall apply.

ITEM 2. Amend rule 481—31.1(137F), introductory paragraph, as follows:

481—31.1(137F) Inspection standards for food establishments.² The department adopts, with the following exceptions, the ~~2013~~ 2017 Food Code with Supplement of the Food and Drug Administration as the state's "food code," which is the inspection standard for food establishments other than food processing plants.

ITEM 3. Amend subrule 31.1(1), introductory paragraph, as follows:

31.1(1) Unattended food establishments—assignment of responsibility. For the purposes of section 2-101.11(C) of the ~~2013~~ 2017 Food Code with Supplement, unattended food establishments are not required to have a designated person in charge present during all hours of operation provided that the permit holder ensures the following requirements are met.

ITEM 4. Rescind subrule 31.1(2) and adopt the following **new** subrule in lieu thereof:

31.1(2) Certified food protection manager requirements, exceptions, and time frames for compliance.

a. For the purposes of section 2-102.12(A) of the 2017 Food Code with Supplement, the food establishment may employ a single certified food protection manager who is not present at the food establishment during all hours of operation, as long as the following requirements are met:

(1) The individual who is a certified food protection manager has supervisory and management responsibility and the authority to direct and control food preparation and service at the food establishment;

(2) The person in charge demonstrates knowledge as prescribed in section 2-102.11 of the 2017 Food Code with Supplement; and

(3) The person in charge demonstrates active managerial control of food safety by complying with section 2-103.11 of the 2017 Food Code with Supplement.

b. A food establishment that, upon inspection, is found to be in violation of section 2-102.11 or 2-103.11 of the 2017 Food Code with Supplement will have six months to ensure that any individual designated as the person in charge is a certified food protection manager.

c. For the purposes of section 2-102.12(B), the following food establishments are not required to employ a certified food protection manager:

(1) Food establishments that sell only prepackaged food.

(2) Temporary or farmers market food establishments.

(3) Food establishments at which food is not prepared, where customers may purchase beverages and where the service of food is limited to the service of ice, beverages, prepackaged snack foods, popcorn or peanuts and to the reheating of commercially prepared foods for immediate service that do not require assembly, such as frozen pizza or prepackaged sandwiches.

(4) Food establishments at which food is not prepared, where customers may purchase only commercially prepared non-time/temperature control for safety foods that are dispensed either unpackaged or packaged and that are intended for off-premises consumption.

d. Time frames for compliance with section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2) "a" and "b" are as follows:

(1) Newly licensed facilities must comply with section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2) "a" and "b," within six months of licensure.

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

(2) If an individual meeting the requirement of paragraph 31.1(2)“a” leaves employment, the establishment shall meet the requirement of section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2)“a” and “b,” within six months of the individual’s departure.

ITEM 5. Rescind subrule **31.1(10)**.

ITEM 6. Renumber subrules **31.1(11)** to **31.1(19)** as **31.1(10)** to **31.1(18)**.

ITEM 7. Amend rule 481—31.4(137D,137F) as follows:

481—31.4(137D,137F) False label or defacement. No person shall use any label required by Iowa Code chapter ~~137C~~ 137D or 137F which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this chapter.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.

ARC 5263C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to food stands and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 30, “Food and Consumer Safety,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 137F.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2 and 2020 Iowa Acts, House File 2238.

Purpose and Summary

The proposed amendments implement changes made to Iowa Code chapter 137F resulting from the enactment of 2020 Iowa Acts, House File 2238. The legislation adds “a stand operated by a minor” to the list of things that are not considered to be a food establishment under the definition of “food establishment,” defines “stand operated by a minor,” and prohibits any regulatory authority from adopting or enforcing a rule requiring a license for a stand operated by a minor.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **481—30.2(10A,137C,137D,137F)**, definition of “Food establishment,” as follows:

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, or the state training school. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). “Food establishment” does not include the following:

1. to 17. No change.
18. A stand operated by a minor.

ITEM 2. Adopt the following **new** definition of “Stand operated by a minor” in rule **481—30.2(10A,137C,137D,137F)**:

“*Stand operated by a minor*” means a stand or other facility operated by a person or persons under the age of 18 at which food is sold directly to consumers that is not time/temperature control for safety food or an alcoholic beverage and that operates on a temporary and occasional basis on private property with the permission of the owner of the property.

ARC 5265C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

**Proposing rule making related to consumable hemp products
and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to adopt new Chapter 32, “Consumable Hemp Products,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in 2020 Iowa Acts, House File 2581.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2581.

Purpose and Summary

The proposed adoption of Chapter 32 implements 2020 Iowa Acts, House File 2581. The legislation defines “consumable hemp product” and provides for the manufacture, sale, and consumption of consumable hemp products. The legislation requires the Department to establish by rule packaging and labeling requirements for consumable hemp products. It also requires the Department to establish registration requirements for manufacturers and sellers of consumable hemp products, including standards for the revocation of registration.

Fiscal Impact

After analysis and review of this rule making, the Department anticipates the following fiscal impact to the State of Iowa:

	Year 1 Costs	Year 2 Costs
Electronic Registration System Implementation Cost	\$ 45,000	—
Annual System Support and Maintenance Costs	—	\$ 15,000
0.5 Clerk FTE Position	\$ 30,000	\$ 30,000
1.0 Environmental Specialist Senior Position	\$ 72,000	\$ 72,000
Miscellaneous Costs	\$ 15,000	\$ 5,000
Total Bureau Costs	\$162,000	\$122,000

Jobs Impact

After analysis and review of this rule making, there may be a positive impact on jobs. This rule making, in conjunction with the authorizing legislation (2020 Iowa Acts, House File 2581), legalizes the manufacture and sale of consumable hemp in the state of Iowa. Growers, manufacturers, and retail stores now have the ability to grow, manufacture, and sell consumable hemp products in Iowa. After initial conversations with industry, the Department anticipates approximately 125 grocery stores, 118 convenience stores, 50 smoke/vape/tobacco stores, 60 hemp/CBD stores, and 50 restaurants may register to sell consumable products and approximately 20 manufacturers may register to manufacture consumable hemp products. House File 2581 authorizes the Department to charge for the cost of processing the registration. The cost for processing the registration will only impact entities wanting to sell or manufacture consumable hemp products in Iowa.

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** 481—Chapter 32:

CHAPTER 32
CONSUMABLE HEMP PRODUCTS

481—32.1(204) Definitions. For the purpose of these rules, the following terms shall have the meanings indicated in this chapter. The definitions set out in Iowa Code section 204.2 shall be considered to be incorporated verbatim herein.

“*Accredited laboratory*” means a laboratory accredited in accordance with the International Organization for Standardization/International Electrotechnical Commission Standard (ISO/IEC) 17025 or a comparable or successor standard.

“*Adulterated*” means the same as in the federal Food, Drug, and Cosmetic Act, Section 402, except that a consumable hemp product is not deemed “adulterated” pursuant to this chapter solely because it contains a hemp product not generally recognized as safe by the federal Food and Drug Administration.

“*Approved hemp source*” means a manufacturer of a consumable hemp product that is engaged in the wholesale or retail sale of the product and that is:

1. Located in this state and manufactures the consumable hemp product in compliance with Iowa Code chapter 204 and these rules; or

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

2. Located in a state that has a state hemp plan approved by the United States Department of Agriculture under 7 U.S.C. Chapter 38, Subchapter VII.

“*Cannabidiol*” or “*CBD*” means a phytocannabinoid identified as an extract from cannabis plants.

“*Certificate of analysis*” or “*COA*” means an official document released by an accredited laboratory following an analysis of a consumable hemp product. The certificate of analysis shall contain the concentrations of cannabinoid, pesticides, residual solvents, metals, harmful pathogens, and toxicants, including data on levels of delta-9 tetrahydrocannabinol (THC) content concentration and whether a sample passed or failed any limits of content analysis.

“*Certificate of free sale*” means a government certification that products such as food, drugs, medicine, or cosmetics are approved for unrestricted sale in the jurisdiction in which they originate.

“*Consumable hemp establishment*” means an individual or entity engaged in manufacturing, processing, packing, holding, preparing, distributing, or selling a consumable hemp product in Iowa or to purchasers located in Iowa. A consumable hemp establishment does not include an individual or entity manufacturing, processing, packing, holding, preparing, distributing, or selling a consumable hemp product containing only hemp seed or hemp seed-derived food ingredients generally recognized as safe (GRAS) under the conditions of use by the United States Food and Drug Administration.

“*Consumable hemp manufacturer*” means a consumable hemp establishment engaged in manufacturing, processing, packing, holding, preparing, distributing, or selling a consumable hemp product on a wholesale basis. A consumable hemp manufacturer includes individuals and entities outside of Iowa that distribute consumable hemp products in Iowa. A consumable hemp manufacturer does not include individuals or entities exclusively engaged in the harvesting, storage, or distribution of raw hemp.

“*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.

4. “Consumable hemp product” includes, but is not limited to, any of the following:

- 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.
- Hemp processed or otherwise manufactured, marketed, sold, or distributed as human food, a human food additive, a human dietary supplement, or a human drug.

5. “Consumable hemp product” does not include a hemp product if the intended use of the hemp product is introduction into the human body by any method of inhalation, as prohibited under Iowa Code section 204.14A.

“*Consumable hemp retailer*” means a consumable hemp establishment selling consumable hemp product to consumers on a retail basis. A consumable hemp retailer includes an establishment selling consumable hemp products online.

“*Department*” means the Iowa department of inspections and appeals.

“*Expiration date*” means the month and year as determined by the manufacturer, packer, or distributor on the basis of tests showing that the product, until that date, under the conditions of handling, storage, preparation, and use per label directions, will, when consumed, contain not less than the quantity of each ingredient as set forth on its label.

“*Food*” means the same as defined in Iowa Code section 137F.1. Food includes human dietary supplements and alcoholic beverages.

“*Harvesting*” applies to farms and farm mixed-type facilities and means activities that are traditionally performed on farms for the purpose of removing raw agricultural commodities from the place they were grown or raised and preparing them for use as food. Harvesting is limited to activities

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

performed on raw agricultural commodities, or on processed foods created by drying/dehydrating a raw agricultural commodity without additional manufacturing/processing, on a farm. Harvesting does not include activities that transform a raw agricultural commodity into a processed food as defined in Section 201(gg) of the federal Food, Drug, and Cosmetic Act. Examples of harvesting include cutting (or otherwise separating) the edible portion of the raw agricultural commodity from the crop plant and removing or trimming part of the raw agricultural commodity (e.g., foliage, husks, roots or stems). Examples of harvesting also include cooling, field coring, filtering, gathering, hulling, shelling, sifting, threshing, trimming of outer leaves of, and washing raw agricultural commodities grown on a farm.

“*Jurisdiction of origin*” means the federal, state, or local regulatory jurisdiction that has the authority to conduct inspections of the facility in which a consumable hemp product was most recently subject to a manufacturing/processing activity.

“*Lot number*” means a specific quantity of raw hemp or processed hemp product that is uniform and intended to meet specifications for identity, strength, purity, and composition that shall contain the manufacturer’s, processor’s, or distributor’s number and a sequence to allow for inventory, traceability, and identification of the plant batches used in the production of consumable hemp products.

“*Manufacturing/processing*” means making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Examples of manufacturing/processing activities include: baking, boiling, bottling, canning, cooking, cooling, cutting, distilling, drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), evaporating, eviscerating, extracting juice, formulating, freezing, grinding, homogenizing, irradiating, labeling, milling, mixing, packaging (including modified atmosphere packaging), pasteurizing, peeling, rendering, treating to manipulate ripening, trimming, washing, or waxing. For farms and farm mixed-type facilities, manufacturing/processing does not include activities that are part of harvesting, packing, or holding.

“*Misbranded*” means a food that violates 21 U.S.C. Section 343.

“*QR code*” means a quick response machine-readable code that can be read by a camera, consisting of an array of black and white squares used for storing information or directing or leading a user to product information regarding manufacturer data and accredited laboratory certificates of analysis.

“*Raw agricultural commodity*” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

“*Raw hemp*” means an unprocessed hemp plant, or any part of the hemp plant, in its raw or natural state. Raw hemp is a raw agricultural commodity.

481—32.2(204) Registration and posting. A consumable hemp establishment shall not engage in manufacturing, processing, packing, holding, preparing, distributing, or selling a consumable hemp product in Iowa or to purchasers located in Iowa until it has submitted a consumable hemp registration that is approved by the department.

32.2(1) Consumable hemp manufactures/distributors. Consumable hemp manufacturers shall register with the department at least 30 days prior to manufacturing, processing, packing, holding, preparing, distributing, or selling any consumable hemp product in Iowa or to purchasers located in Iowa. The consumable hemp manufacturer shall:

- a. Complete the online registration form prescribed by the department;
- b. Remit the registration fee set by the department in accordance with Iowa Code section 204.7; and
- c. Submit a complete list of all consumable hemp products the consumable hemp manufacturer intends to manufacture, process, pack, hold, prepare, distribute, or sell, along with documentation of the jurisdiction of origin for each consumable hemp product.

32.2(2) Consumable hemp retailers. Consumable hemp retailers shall register with the department at least 30 days prior to selling any consumable hemp product in Iowa or to purchasers located in Iowa. The consumable hemp retailer shall:

- a. Complete the online registration form prescribed by the department;

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b. Remit the registration fee set by the department in accordance with Iowa Code section 204.7; and

c. Submit a complete list of all consumable hemp products the consumable hemp retailer intends to sell, along with documentation of the jurisdiction of origin for each consumable hemp product.

32.2(3) Combined consumable hemp manufacturers and retailers. A consumable hemp establishment engaged in activities of a consumable hemp manufacturer and a consumable hemp retailer shall submit a separate registration for each activity.

32.2(4) Physical location. A consumable hemp establishment's registration is valid for one physical location. A consumable hemp establishment that manufactures, processes, packs, holds, prepares, distributes, or sells a consumable hemp product at more than one physical location shall submit a separate registration for each physical location.

32.2(5) Expiration and renewal. A consumable hemp registration, unless sooner suspended or revoked, shall expire one year after the registration is approved by the department. A consumable hemp registration shall be renewed annually through the department's online registration system, accompanied by the required fee, at least 30 days prior to expiration. Consumable hemp registrations that are expired more than 60 days will be revoked without notice.

32.2(6) Transferability. A consumable hemp registration is not transferable to a new owner or new physical location.

32.2(7) Posting of registrations. A valid registration shall be posted on the premises of the consumable hemp establishment in a location that is visible to the public. An image of the valid registration must also be posted on any website or online point of sale in a location that is visible to the public prior to payment.

32.2(8) Returned payments. The department will attempt to redeem a payment submitted for a consumable hemp registration that is not honored by the bank on which it is drafted. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored payment. If the department does not receive payment, the establishment will be operating without a valid registration and is subject to penalties set forth in rules 481—32.7(204) and 481—32.8(204) (violations and enforcement; denial, suspension, or revocation of registration).

481—32.3(204) Testing requirements and documentation.

32.3(1) Approved hemp source; certificate of analysis. A consumable hemp product shall not be distributed or sold unless:

a. The consumable hemp product is from an approved hemp source and is accompanied by documentation that identifies the jurisdiction of origin. Documentation that identifies the jurisdiction of origin includes:

- (1) Certificate of free sale issued by the jurisdiction of origin;
- (2) Product label statements, provided the product label identifies the jurisdiction of origin; or
- (3) Other documentation that identifies the jurisdiction of origin and also identifies the following:
 1. Brand name;
 2. Container size in terms of net quantity of contents; and
 3. Lot number.

b. The consumable hemp product has a certificate of analysis prepared by an independent accredited laboratory that verifies and states:

(1) The consumable hemp product is from a batch that has been tested by the independent accredited laboratory;

(2) The presence and concentration of cannabinoids;

(3) The consumable hemp product is from a batch that contained a total delta-9-tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry weight basis as calculated pursuant to an official postdecarboxylation analysis, as provided in Iowa Code section 204.8; and

(4) The consumable hemp product is from a batch that has been tested for pesticides, residual solvents, metals, harmful pathogens, and toxicants and does not exceed limits established in this rule.

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32.3(2) Toxicant limits. If a testing sample is found to contain levels of any pesticide, residual solvent, metal, harmful pathogen, or toxicant that exceeds limits enumerated in this rule or by Iowa law, the product shall be considered adulterated and shall not enter commerce. The following lists of contaminants do not constitute authorization to use or apply any of the following during hemp cultivation or processing.

a. Pesticide limits.

- (1) Abamectin, 300 parts per billion.
- (2) Acephate, 3,000 parts per billion.
- (3) Acequinocyl, 2,000 parts per billion.
- (4) Acetamiprid, 3,000 parts per billion.
- (5) Aldicarb, 100 parts per billion.
- (6) Azoxystrobin, 3,000 parts per billion.
- (7) Bifenazate, 3,000 parts per billion.
- (8) Bifenthrin, 500 parts per billion.
- (9) Boscalid, 3,000 parts per billion.
- (10) Captan, 3,000 parts per billion.
- (11) Carbaryl, 500 parts per billion.
- (12) Carbofuran, 100 parts per billion.
- (13) Chlorantraniliprole, 3,000 parts per billion.
- (14) Chlordane, 100 parts per billion.
- (15) Chlorfenapyr, 100 parts per billion.
- (16) Chloromequat chloride, 3,000 parts per billion.
- (17) Chlorpyrifos, 100 parts per billion.
- (18) Clofentezine, 500 parts per billion.
- (19) Coumaphos, 100 parts per billion.
- (20) Cyfluthrin, 1,000 parts per billion.
- (21) Cypermethrin, 1,000 parts per billion.
- (22) Daminozide, 100 parts per billion.
- (23) DDVP (Dichlorvos), 100 parts per billion.
- (24) Diazinon, 200 parts per billion.
- (25) Dimethoate, 100 parts per billion.
- (26) Dimethomorph, 3,000 parts per billion.
- (27) Ethoprop(hos), 100 parts per billion.
- (28) Etofenprox, 100 parts per billion.
- (29) Etoxazole, 1,500 parts per billion.
- (30) Fenhexamid, 3,000 parts per billion.
- (31) Fenoxycarb, 100 parts per billion.
- (32) Fenpyroximate, 2,000 parts per billion.
- (33) Fipronil, 100 parts per billion.
- (34) Flonicamid, 2,000 parts per billion.
- (35) Fludioxonil, 3,000 parts per billion.
- (36) Hexythiazox, 2,000 parts per billion.
- (37) Imazalil, 100 parts per billion.
- (38) Imidacloprid, 3,000 parts per billion.
- (39) Kresoxim-methyl, 1,000 parts per billion.
- (40) Malathion, 2,000 parts per billion.
- (41) Metalaxyl, 3,000 parts per billion.
- (42) Methiocarb, 100 parts per billion.
- (43) Methomyl, 100 parts per billion.
- (44) Methyl parathion, 100 parts per billion.
- (45) Mevinphos, 100 parts per billion.
- (46) Myclobutanil, 3,000 parts per billion.

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- (47) Naled, 500 parts per billion.
- (48) Oxamyl, 500 parts per billion.
- (49) Paclobutrazol, 100 parts per billion.
- (50) Pentachloronitrobenzene, 200 parts per billion.
- (51) Permethrin, 1,000 parts per billion.
- (52) Phosmet, 200 parts per billion.
- (53) Piperonyl butoxide, 3,000 parts per billion.
- (54) Prallethrin, 400 parts per billion.
- (55) Propiconazole, 1,000 parts per billion.
- (56) Propoxur, 100 parts per billion.
- (57) Pyrethrins, 1,000 parts per billion.
- (58) Pyridaben, 3,000 parts per billion.
- (59) Spinetoram, 3,000 parts per billion.
- (60) Spinosad A and D, 3,000 parts per billion.
- (61) Spiromesifen, 3,000 parts per billion.
- (62) Spirotetramat, 3,000 parts per billion.
- (63) Spiroxamine, 100 parts per billion.
- (64) Tebuconazole, 1,000 parts per billion.
- (65) Thiacloprid, 100 parts per billion.
- (66) Thiamethoxam, 1,000 parts per billion.
- (67) Trifloxystrobin, 3,000 parts per billion.
- b. Residual solvent limits.
 - (1) 1,2-Dichloroethene, 5 parts per million.
 - (2) 1,1-Dichloroethene, 8 parts per million.
 - (3) Acetone, 5,000 parts per million.
 - (4) Acetonitrile, 410 parts per million.
 - (5) Benzene, 2 parts per million.
 - (6) Butane, 2,000 parts per million.
 - (7) Chloroform, 60 parts per million.
 - (8) Ethanol, 5,000 parts per million.
 - (9) Ethyl acetate, 5,000 parts per million.
 - (10) Ethyl ether, 5,000 parts per million.
 - (11) Ethylene oxide, 5 parts per million.
 - (12) Heptane, 5,000 parts per million.
 - (13) Hexane, 290 parts per million.
 - (14) Isopropyl alcohol, 500 parts per million.
 - (15) Methanol, 3,000 parts per million.
 - (16) Methylene Chloride, 600 parts per million.
 - (17) Pentane, 5,000 parts per million.
 - (18) Propane, 2,100 parts per million.
 - (19) Toluene, 890 parts per million.
 - (20) Trichloroethylene (1,1,2-Trichloroethene), 80 parts per million.
 - (21) Xylenes, Total (ortho-, meta-, para-), 2170 parts per million.
- c. Metals limits.
 - (1) Cadmium, 0.5 micrograms/gram.
 - (2) Lead, 0.5 micrograms/gram.
 - (3) Arsenic, 1.5 micrograms/gram.
 - (4) Mercury, 3.0 micrograms/gram.
- d. Pathogen limits.
 - (1) Shiga toxin-producing *Escherichia coli* (STEC) and other pathogenic *E. coli*, none present.
 - (2) *Listeria monocytogenes*, none present.
 - (3) *Salmonella*, none present.

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- e.* Mycotoxin limits.
 - (1) Total aflatoxin (B1, B2, G1, G2), 20 parts per billion.
 - (2) Ochratoxin, 20 parts per billion.

32.3(3) *Examination of records.* All documentation required by this rule shall be maintained by the consumable hemp establishment and provided to the department or other regulatory authority immediately upon request.

32.3(4) *Independent accredited laboratory.* A consumable hemp establishment shall not utilize an accredited laboratory in which it has an ownership interest, unless the consumable hemp establishment holds less than a 10 percent ownership interest in the accredited laboratory if the accredited laboratory is a publicly traded company.

481—32.4(204) Packaging and labeling requirements.

32.4(1) *Contents.* Each consumable hemp product intended for individual retail sale shall be labeled such that a reasonable consumer would plainly identify the product as a consumable hemp product and shall contain the following information:

- a.* Lot number;
- b.* Expiration date;
- c.* Product name;
- d.* Name, telephone number, and email address of the product manufacturer;
- e.* If specific cannabinoids are contained within or marketed for the product, the number of milligrams of each cannabinoid per serving and serving size;
- f.* A certificate of analysis that the batch contained a total delta-9-tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry weight basis as calculated pursuant to an official test as provided in Iowa Code section 204.8.

32.4(2) *Form.* The labeling requirements of paragraphs 32.4(1) “*d*” and “*f*” may be in the form of:

- a.* A uniform resource locator (URL) for the manufacturer’s Internet website that provides or links to the information required by this section; or
- b.* A QR code or other bar code that may be scanned and that leads to the information required on the label.

481—32.5(204) Applicability of other laws and regulations.

32.5(1) A consumable hemp establishment shall comply with all relevant Iowa laws and regulations applicable to the manufacturing, processing, storage, distribution, and sale of food, including but not limited to Iowa Code chapter 137F (food establishments and food processing plants), Iowa Code chapter 137D (home bakeries), and regulations promulgated under those chapters.

32.5(2) An individual or entity subject to Iowa Code chapter 123 shall not introduce any consumable hemp product into the alcoholic beverage product for which the individual or entity is subject to Iowa Code chapter 123, unless the consumable hemp product is generally recognized as safe by the federal Food and Drug Administration and is thus not deemed adulterated pursuant to the federal Food, Drug, and Cosmetic Act, Section 402. A consumable hemp retailer that is not subject to Iowa Code chapter 123 may introduce any consumable hemp product into alcoholic beverage products sold to consumers on a retail basis in intrastate commerce.

32.5(3) An individual or entity subject to Iowa Code chapter 189A shall not introduce any consumable hemp product into the meat or poultry product for which the individual or entity is subject to Iowa Code chapter 189A, unless the consumable hemp product is generally recognized as safe by the federal Food and Drug Administration and is thus not deemed adulterated pursuant to the federal Food, Drug, and Cosmetic Act, Section 402. A consumable hemp retailer that is not subject to Iowa Code chapter 189A may introduce any consumable hemp product into meat or poultry sold to consumers on a retail basis in intrastate commerce.

32.5(4) An individual or entity subject to Iowa Code chapters 190 to 192 shall not introduce any consumable hemp product into the dairy product for which the individual or entity is subject to Iowa Code chapters 190 to 192, unless the consumable hemp product is generally recognized as safe by the

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

federal Food and Drug Administration and is thus not deemed adulterated pursuant to the federal Food, Drug, and Cosmetic Act, Section 402. A consumable hemp retailer that is not subject to Iowa Code chapters 190 to 192 may introduce any consumable hemp products into dairy products sold to consumers on a retail basis in intrastate commerce.

32.5(5) Consumable hemp products in interstate commerce are subject to federal law. Compliance with Iowa Code chapter 204 and this chapter does not represent compliance with federal law.

481—32.6(204) Prohibitions.

32.6(1) A consumable hemp establishment shall not manufacture, process, pack, hold, prepare, distribute, or sell consumable hemp products:

a. On the premises of a private residence, except a portion of a private residence that is distinctly separate from any living space, that is dedicated to the production or sale of food, and that meets all applicable state and local regulations;

b. On the premises of a temporary location, including but not limited to a food stand, farmers market food stand, roadside stand, temporary booth, or any other temporary structure;

c. Door to door;

d. Through vending machines; or

e. At private parties.

32.6(2) A consumable hemp product label and any associated marketing materials shall not contain any claims that the consumable hemp product can be used in the diagnosis, cure, mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body.

32.6(3) A consumable hemp retailer shall not manufacture, process, package, repackage, relabel, mix, blend, or otherwise manipulate a consumable hemp product. This subrule does not apply to a food service establishment that utilizes a consumable hemp product from an approved hemp source as a food ingredient intended for immediate consumption by the consumer, provided that the food service establishment discloses all label information required by rule 481—32.4(204) (packaging and labeling requirements) to the consumer through the menu, a menu board, placard, table tent, or other effective means.

32.6(4) A consumable hemp product that does not conform to this chapter shall be considered adulterated or misbranded and shall not enter commerce.

481—32.7(204) Violations and enforcement.

32.7(1) Any consumable hemp product introduced into commerce by an individual or entity without a consumable hemp registration approved by the department in accordance with rule 481—32.2(204) (registration and posting) is subject to immediate embargo.

32.7(2) A consumable hemp product that is adulterated or misbranded when introduced into commerce is subject to immediate embargo.

32.7(3) A consumable hemp product that the department reasonably believes may be injurious to public health or that has entered commerce and is not in conformance with this chapter is subject to immediate embargo.

32.7(4) The embargo of a consumable hemp product shall be effective until such a time as the violation is remedied or the product is disposed of in a reasonable manner as determined by the department. If the violation cannot be remedied and disposal is required, the cost of disposal is the responsibility of the consumable hemp establishment. Disposal shall be observed by a person approved by the department. The embargo of a consumable hemp product may be appealed in accordance with rule 481—32.8(204) (denial, suspension, or revocation of registration).

32.7(5) A consumable hemp manufacturer shall conduct a recall of a consumable hemp product lot that has been tested and found to be adulterated. The cost of a recall or disposal of the product is the responsibility of the consumable hemp manufacturer.

481—32.8(204) Denial, suspension, or revocation of registration. The department may deny, suspend, or revoke a registration in any case where the department finds that there has been repeated failure on

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

the part of the consumable hemp establishment to comply with the provisions of this chapter, or for any of the following reasons:

32.8(1) Failure to register. An individual or entity that introduces a consumable hemp product into commerce without a consumable hemp registration approved by the department in accordance with rule 481—32.2(204) (registration and posting) may be denied a consumable hemp registration for a period of up to 30 days for a first violation; up to one year for a second violation; and up to five years for a third or any subsequent violation.

32.8(2) Nonconforming consumable hemp product. A registered consumable hemp establishment that introduces a consumable hemp product into commerce that is not in conformance with Iowa Code chapter 204 or this chapter is subject to the immediate revocation of its registration.

32.8(3) Qualifying criminal offense.

a. The conviction of any individual with an ownership interest in a consumable hemp establishment constituting a felony, serious misdemeanor, or aggravated misdemeanor and resulting from an activity constituting a criminal offense in the consumable hemp establishment may result in the denial, suspension, or revocation of the registration.

b. A conviction for committing a criminal offense involving a controlled substance as described in Iowa Code section 204.7 may result in the denial, suspension, or revocation of the registration.

c. A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the registration holder.

d. A deferred judgment shall be considered a conviction for purposes of this rule.

32.8(4) False or misleading information. Providing false or misleading information to the department under this chapter, including by submitting a false registration may result in the denial, suspension, or revocation of the registration.

32.8(5) Failure to comply. Failing to comply with an order issued by the department under this chapter may result in the denial, suspension, or revocation of the registration.

32.8(6) Successive violations. A third violation of any provision of this chapter in a five-year period shall result in the denial, suspension, or revocation of the registration. The department shall disapprove any registration of a consumable hemp establishment for a five-year period following the date of the last violation.

32.8(7) Materially false information supplied. An individual or entity who materially falsifies any information contained in a consumable hemp registration shall be ineligible for registration.

481—32.9(204) Inspection and access to records. The department may enter a consumable hemp establishment at any reasonable hour to assess compliance with Iowa Code chapter 204 and these rules. The manager or person in charge of the consumable hemp establishment shall afford free access to every part of the premises, including access to records related to consumable hemp products, and shall render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete assessment.

481—32.10(204) Public examination of records.

32.10(1) *Public information.* Generally, information collected by the food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director.

32.10(2) *Confidential information.*

a. The following are examples of confidential records:

(1) Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;

(2) Health information related to foodborne illness complaints and outbreaks;

(3) The name or any identifying information of a person who files a complaint with the department; and

(4) Other state or federal agencies' records.

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b. A party claiming that information submitted to the department contains trade secrets or proprietary information should clearly mark those portions of the submission as confidential/trade secret.

32.10(3) Other agencies' records. For records of other state or federal agencies, the department shall refer the requester of such information to the appropriate agency.

481—32.11(204) Appeals. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 9, “Contested Cases.”

These rules are intended to implement 2020 Iowa Acts, House File 2581.

ARC 5261C**REAL ESTATE APPRAISER EXAMINING BOARD[193F]****Notice of Intended Action****Proposing rule making related to update of rules
and providing an opportunity for public comment**

The Real Estate Appraiser Examining Board hereby proposes to amend Chapter 1, “Organization and Administration,” Chapter 3, “General Provisions for Examinations,” Chapter 4, “Associate Real Property Appraiser,” Chapter 5, “Certified Residential Real Property Appraiser,” Chapter 6, “Certified General Real Property Appraiser,” Chapter 7, “Disciplinary Actions Against Certified and Associate Appraisers,” to adopt new Chapter 13, “Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions,” and to amend Chapter 18, “Waivers and Variances from Rules,” Chapter 20, “Contested Cases,” Chapter 22, “Petition for Rule Making,” Chapter 25, “Public Records and Fair Information Practices,” and Chapter 26, “Military Service, Veteran Reciprocity, and Spouses of Active Duty Military Service Members,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 543D.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 543D.

Purpose and Summary

These amendments implement changes recommended and required by 2020 Iowa Acts, House File 2389 and House File 2627.

Fiscal Impact

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

Jobs Impact

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

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Brandy March
Real Estate Appraiser Examining Board
East Grand Office Park
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9025
Email: brandy.march@iowa.gov

Public Hearing

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

November 24, 2020
10 to 11 a.m.

Small Conference Room, Third Floor
200 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 rule making.

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.2(3) as follows:

1.2(3) Prior to taking discretionary action under Iowa Code chapter 543D and 193F—Chapter 17, the board shall secure approval of the superintendent if the proposed action is or may be anticompetitive, as provided in 193F—Chapter 17. As used in this chapter, “discretionary” shall include any action that is authorized but not expressly required 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 rule making, declaratory orders, or waivers ~~or variances~~ from rules, rule making, disciplinary proceedings against licensees, administrative proceedings against unlicensed persons, or any action commenced in the district court.

ITEM 2. Amend rule 193F—1.22(272C,543D) as follows:

193F—1.22(272C,543D) Process for board review of eligibility.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

~~1.22(1) Before~~ As more fully set forth in, as described in, and in accordance with 193F—Chapter 13, before applying for registration as an associate appraiser or certification as a certified appraiser, a person with a criminal history or other background matters that may impair registration or certification may request that the board evaluate the prospective applicant’s criminal history or other background matters by submitting a written request to the board. Upon receiving such a request, the board may request additional supporting materials.

~~1.22(2) Requests will be processed under the same standards as applications for registration or certification in order to inform the prospective applicant whether any of the disclosed information is or may be a bar to future registration or certification. In responding to a request, the board shall address only the offenses or matters listed in the request. The board’s response will be based upon the laws, rules, and guidelines in effect at the time of the board’s response, including the guidelines and policies promulgated by the AQB or ASC.~~

~~1.22(3) If the information supplied is not accurate or is incomplete, or if applicable laws, rules, or guidelines change or are impacted by intervening board orders or case law, the board’s response shall not be binding on a future board.~~

ITEM 3. Amend rule 193F—3.4(543D) as follows:

193F—3.4(543D) Application for certification or registration. Applicants for certification or registration must successfully complete the appropriate examination.

3.4(1) All initial applications for certification or associate registration shall be made on forms provided by the board. The board may deny an application as described in Iowa Code sections 543D.12 and 543D.17. Specific examples of grounds for denial include knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or participating in any form of fraud or misrepresentation; the revocation of another professional license; or, subject to the limitations and processes set forth in Iowa Code section 272C.15 as enacted by 2020 Iowa Acts, House File 2627, and corresponding implementing rules located at 193F—Chapter 13, a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions and duties of a person developing real estate appraisals and communicating real estate appraisals to others. The board may also deny an application based on disciplinary action taken against an associate appraiser registration.

3.4(2) and 3.4(3) No change.

ITEM 4. Amend subrule 4.1(5) as follows:

4.1(5) 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.

ITEM 5. Amend rule 193F—5.4(543D) as follows:

193F—5.4(543D) Supervised experience required for initial certification. All Except as otherwise permitted herein, all experience required for initial certification pursuant to Iowa Code section 543D.9 shall be performed as a registered associate real property appraiser under the direct supervision of a certified residential real property appraiser pursuant to the provisions of 193F—Chapter 15.

5.4(1) No change.

5.4(2) Exceptions. Applicants for certified residential real property certification in Iowa may utilize experience obtained in the absence of registration as an associate real property appraiser under the following circumstances:

a. Subject to any requirements 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, including in a bordering state, 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:

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

(1) A majority of the applicant's total qualifying experience hours are completed in Iowa under the direct supervision of a certified real property appraiser pursuant to the provisions of 193F—Chapter 15.

(2) The qualifying hours obtained in another jurisdiction and claimed as experience hours in Iowa were completed in a jurisdiction under the direct supervision of an active certified real estate appraiser in that jurisdiction as required by the AQB and the jurisdiction's laws, rules, or policies.

(3) The nature of the experience attained in another jurisdiction is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

~~a. b.~~ Applicants for initial certification in Iowa who request that the board approve Requests for experience performed in the absence of registration as an associate real property appraiser may file an application for approval on a form provided shall be made on forms prescribed by the board. The burden shall be on the applicant to establish by clear and convincing evidence all of the following:

(1) The burden shall be on the applicant to establish by clear and convincing evidence all of the following:

1. The experience is qualifying experience under the substantive and documentation standards of the Appraiser Qualifications Board AQB and Appraisal Subcommittee ASC.

~~(2)~~ 2. Denial of the application would impose an undue hardship on the applicant.

~~(3)~~ 3. The nature of the experience attained is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

~~(4)~~ 4. Approval of the application would foster the board's goal of fair and consistent treatment of applicants.

~~(5)~~ 5. A basis exists beyond the individual control of the applicant to explain why the experience at issue could not have been attained by the applicant as an associate real property appraiser under the direct supervision of a certified real property appraiser.

~~b. (2)~~ Among the circumstances the board may consider favorably in ruling on an application for approval of unsupervised experience or experience attained by the applicant in the absence of registration as an associate real property appraiser are:

~~(1)~~ 1. The experience was attained in a jurisdiction that, at the time, did not register associate real property appraisers or otherwise offer an associate, trainee or equivalent category of certification.

~~(2)~~ 2. The applicant attained the experience while employed in a county assessor's office engaged in mass appraisals, and the experience would otherwise qualify under applicable federal standards.

ITEM 6. Amend rule 193F—6.4(543D) as follows:

193F—6.4(543D) Supervised experience required for initial certification. ~~All~~ Except as otherwise permitted herein, all experience required to obtain certification as a certified general real property appraiser pursuant to Iowa Code section 543D.9 shall be performed under the direct supervision of a certified general real property appraiser pursuant to the provisions of 193F—Chapter 15.

6.4(1) No change.

6.4(2) Exceptions. Applicants for certified general real property certification in Iowa may utilize experience obtained in the absence of registration as an associate real property appraiser under the following circumstances.

a. Subject to any requirements 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, including a bordering state, 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) A majority of the applicant's total qualifying experience hours are completed in Iowa under the direct supervision of a certified real property appraiser pursuant to the provisions of 193F—Chapter 15.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

(2) The qualifying hours obtained in the jurisdiction and claimed as experience hours in Iowa were completed in another jurisdiction under the direct supervision of an active certified real estate appraiser in that jurisdiction as required by the AQB and the jurisdiction's laws, rules, or policies.

(3) The nature of the experience attained in another jurisdiction is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

~~a. b.~~ Applicants for certified general real property certification in Iowa who request that the board approve Requests for experience performed in the absence of registration as an associate real property appraiser may file an application for approval on a form provided shall be made on forms prescribed by the board. The burden shall be on the applicant to establish by clear and convincing evidence all of the following:

(1) The burden shall be on the applicant to establish by clear and convincing evidence all of the following:

1. The experience is qualifying experience under the substantive and documentation standards of the Appraiser Qualifications Board AQB and Appraisal Subcommittee ASC.

~~(2) 2.~~ Denial of the application would impose an undue hardship on the applicant.

~~(3) 3.~~ The nature of the experience attained is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

~~(4) 4.~~ Approval of the application would foster the board's goal of fair and consistent treatment of applicants.

~~(5) 5.~~ A basis exists beyond the individual control of the applicant to explain why the experience at issue could not have been attained by the applicant under the direct supervision of a certified general real property appraiser.

~~b. (2)~~ Among the circumstances the board may consider favorably in ruling on an application for approval of unsupervised experience or experience attained by the applicant in the absence of registration as an associate real property appraiser are:

~~(1) 1.~~ The experience was attained in a jurisdiction that, at the time, did not require direct supervision or register associate real property appraisers or otherwise offer a category of certification.

~~(2) 2.~~ The applicant attained the experience while employed in a county assessor's office engaged in mass appraisals, and the experience would otherwise qualify under applicable federal standards.

ITEM 7. Amend subrule 7.3(11) as follows:

7.3(11) Conviction of a crime.

a. Conviction, in this state or any other jurisdiction, of any felony related 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 shall be deemed substantially directly related to the practice of real property appraising. A certified copy of the record final order or judgment of conviction or plea of guilty in this state or in another jurisdiction shall be conclusive evidence of the conviction. "Conviction" shall include 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 shall 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.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

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.

ITEM 8. Adopt the following **new** 193F—Chapter 13:

CHAPTER 13

USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL LICENSING DECISIONS

193F—13.1(272C) Definitions. For the purposes of these rules, the following definitions shall apply:

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted.

“*Conviction or convicted*” includes all convictions regardless of whether classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred. “Conviction” includes 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 practice of the profession. A conviction is directly related to the practice 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 or licensure,*” as the term is used in this chapter, includes a registration as an associate appraiser, original certification as a certified residential real property appraiser or certified general real property appraiser, upgrade from a certified residential real property appraiser to a certified general real property appraiser, reciprocal license, temporary practice permit, or any other license or certification issued by the board.

193F—13.2(272C) License application.

13.2(1) *Disqualifying offense determination.* If an applicant for licensure elects not to petition the board for an eligibility determination, the applicant’s convictions will be reviewed when the board receives a completed license application. 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. Upon request of the board’s executive officer, an applicant with 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. An applicant is strongly encouraged to submit all evidence of rehabilitation that the applicant wishes to be considered by the board as part of the license application. 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. Any application fees paid will not be refunded if the license is denied.

13.2(2) *Time and manner of decision.* The board may make a decision in accordance with normal application processing timelines after discussing the petition for eligibility determination at a board meeting, in closed session, or may authorize staff to make decisions regarding potentially disqualifying offenses.

193F—13.3(272C) Eligibility determination.

13.3(1) *Eligibility determination.* An individual who has not yet submitted a completed license application may petition the board for an eligibility determination of whether one or more of the individual’s convictions are disqualifying offenses that would prevent the individual from being licensed. A petitioner may submit a petition for eligibility determination at any time prior to applying for a license. An applicant for licensure is not required to petition the board for an eligibility determination

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

prior to applying for a license. To petition the board for an eligibility determination of whether one or more of the petitioner's convictions are disqualifying offenses, 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;
- d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- e. Payment of a nonrefundable fee in the amount of \$25.

13.3(2) *Time and manner of decision.* The board has 30 days from receiving a petition for eligibility determination, or until the next regularly scheduled board meeting, whichever is later, to make a decision. The board may make a decision after discussing the petition for eligibility determination at a board meeting, in closed session, or may authorize staff to make decisions on petitions for eligibility determinations or license applications. A written decision will be sent to the petitioner or applicant by regular mail and, if an email address was provided, by email.

13.3(3) *Inaccurate or incomplete information.* If the information supplied in connection with a petition for eligibility determination is not accurate or is incomplete, or if applicable laws, rules, or guidelines change or are impacted by intervening board orders or case law, the board's eligibility determination shall not be binding on a future board.

193F—13.4(272C) Substance of decision. In reviewing a petition for eligibility determination or a license application involving potentially disqualifying offenses, the board will determine whether any of the convictions are disqualifying offenses in the following manner.

13.4(1) *No disqualifying offenses.*

a. If the board finds that none of the convictions disclosed in an eligibility determination petition are disqualifying offenses, the board will issue a written decision informing the petitioner that the disclosed convictions will not be grounds for license denial.

b. If the board finds that none of an applicant's convictions disclosed in a license application are disqualifying offenses, the applicant's convictions will not form the basis of any denial.

c. Notwithstanding the foregoing, an applicant with no disqualifying convictions must still meet all other requirements to be eligible for licensure and may be denied a license on other grounds.

13.4(2) *Disqualifying offense.* If one or more convictions are disqualifying offenses, the board will determine whether the petitioner or applicant has established rehabilitation by clear and convincing evidence utilizing the following factors:

a. The nature and seriousness of the crime for which the applicant was convicted.

b. The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant's release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of Iowa Code section 709.4, a sexually violent offense as defined in Iowa Code section 229A.2, dependent adult abuse in violation of Iowa Code section 235B.20, or a forcible felony as defined in Iowa Code section 702.11, and the applicant has not been convicted of another crime after release from incarceration.

c. The circumstances relative to the offense, including any aggravating and mitigating circumstances or social conditions surrounding the commission of the offense.

d. The age of the applicant at the time the offense was committed.

e. Any treatment undertaken by the applicant.

f. Whether a certificate of employability has been issued to the applicant pursuant to Iowa Code section 906.19.

g. Any letters of reference submitted on behalf of the applicant.

h. All other relevant evidence of rehabilitation and present fitness of the applicant.

13.4(3) *Petitioner or applicant rehabilitated.*

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

a. If the board finds that the petitioner established rehabilitation for all disqualifying offenses disclosed in an eligibility determination petition, the board will issue a written decision informing the petitioner that the disclosed convictions will not be grounds for denial if the petitioner later submits a completed license application.

b. If the board finds that the applicant established rehabilitation for all disqualifying offenses, the applicant's convictions will not form the basis of any denial.

c. Notwithstanding the foregoing, an applicant who demonstrated rehabilitation for all disqualifying convictions must still meet all other requirements to be eligible for licensure and may be denied a license on other grounds.

13.4(4) *Petitioner or applicant not rehabilitated.* If the board finds the petitioner or applicant failed to demonstrate rehabilitation for all disqualifying offenses, the board will issue a written decision informing the petitioner or applicant that one or more convictions are grounds for license denial. The board's written decision will include all of the following:

- a.* The convictions that are disqualifying;
- b.* A written determination as to how each disqualifying offense is encompassed by a publicly available list identifying the convictions that may disqualify an applicant from receiving a license;
- c.* A written determination that each disqualifying offense directly relates to the profession;
- d.* A written finding regarding each rehabilitation factor specified in subrule 13.4(2);
- e.* The earliest date the petitioner or applicant may submit a new petition for eligibility determination or license application;
- f.* A statement indicating that evidence of rehabilitation may be considered upon reapplication, including any specific evidence the board would find persuasive on reapplication, if any; and
- g.* Information regarding how to appeal the decision and have the matter set for hearing.

193F—13.5(272C) Appeal. A petitioner or applicant may appeal a determination of ineligibility, or the denial of a license application, in the manner and time frame set forth in the board's written decision. A timely appeal will cause a nondisciplinary license denial contested case proceeding as provided in rule 193F—20.39(546,543D,272C) to be initiated. The board's rules governing nondisciplinary license denial contested case hearings will apply unless otherwise specified in this rule. Failure to timely appeal will result in the board's written decision becoming a final order.

13.5(1) A petitioner or applicant must appeal a determination of ineligibility or the denial of a license application in order to exhaust administrative remedies.

13.5(2) A file-stamped copy of the final order or judgment of conviction or plea of guilty constitutes conclusive evidence of a conviction.

13.5(3) The board shall have the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense by a preponderance of the evidence. Once established, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

13.5(4) A petitioner or applicant who is aggrieved or adversely affected by a final decision of the board rendered following a nondisciplinary hearing following a nondisciplinary license denial hearing must initiate further appeal to the superintendent in accordance with 193F—Chapter 17 in order to exhaust administrative remedies.

13.5(5) A petitioner or applicant may only seek judicial review of a determination of ineligibility or license application denial after the issuance of a final order following a contested case proceeding and following any appeal to or review by the superintendent, if taken or initiated within applicable time frames.

13.5(6) Judicial review of final agency action shall be in accordance with Iowa Code section 17A.19.

193F—13.6(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

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

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.

ITEM 9. Amend **193F—Chapter 18**, title, as follows:

~~WAIVERS AND VARIANCES FROM RULES~~

ITEM 10. Amend rule 193F—18.1(17A,543D) as follows:

193F—18.1(17A,543D) Definitions. For purposes of this chapter, “a waiver ~~or variance~~” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 11. Amend rule 193F—18.4(17A,543D), introductory paragraph, as follows:

193F—18.4(17A,543D) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule 193F—18.6(17A,543D), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

ITEM 12. Amend subrule 18.11(2) as follows:

18.11(2) The board chair, or vice chair if the chair is unavailable, may rule on a petition for waiver ~~or variance~~ if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

ITEM 13. Amend subrule 18.11(5) as follows:

18.11(5) This rule on interim rulings does not apply if the waiver ~~or variance~~ was filed in a contested case.

ITEM 14. Amend rule 193F—18.13(17A,543D) as follows:

193F—18.13(17A,543D) Summary reports. ~~Semiannually, the board shall prepare a summary report identifying~~ When the board grants or denies a waiver, within 60 days thereof the board shall submit the information required by this rule to the Internet site devised by the administration rules coordinator pursuant to Iowa Code section 17A.9A(4) as amended by 2020 Iowa Acts, House File 2389, to identify rules for which a petition for a waiver has been granted or denied and make this information available to the public. The required information, some of which may be generated by the Internet site, includes the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board’s actions on waiver requests. If practicable, the ~~report board~~ shall ~~detail include information detailing~~ the extent to which the granting of a waiver has ~~established a precedent for additional waivers and the extent to which the granting of waivers has affected the general applicability of the rule itself.~~ Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

ITEM 15. Amend subrule 20.21(1) as follows:

20.21(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 shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date. The board 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 shall be given by the board to all parties. For good cause the presiding officer may permit ~~variances~~ waivers, in whole or in part, from this rule.

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ITEM 16. Amend subrule 22.4(2) as follows:

22.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition or adopted a rule on the subject of the petition if the petition is not required to be filed according to the procedure in Iowa Code section 17A.4(1). Service of the written notice shall be sent to the email address provided by the petitioner unless the petitioner specifically requests a mailed copy. Petitioner shall be deemed notified of the denial or granting of the petition on the date when the board emails or delivers the required notification to petitioner.

ITEM 17. Adopt the following **new** rule 193F—22.5(17A):

193F—22.5(17A) Submission to administrative rules review committee.

22.5(1) Following the board's receipt of a petition, the board will submit a copy of the petition to the administrative rules review committee.

22.5(2) Following the board's disposition of a petition, the board will submit a copy of the written notice documenting the board's disposition of the petition to the administrative rules review committee. Notwithstanding the foregoing, if, in response to a petition, the board institutes rule-making proceedings on the subject of the petition, the filing of a notice of intended action shall satisfy the requirement that the board notify the administrative rules review committee of the disposition of the petition.

This rule is intended to implement Iowa Code chapter 17A.

ITEM 18. Amend rule 193F—25.3(17A,22) as follows:

193F—25.3(17A,22) Requests for access to records.

25.3(1) No change.

25.3(2) Office hours. Open records shall be made available for in-person examination and copying during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

25.3(3) Request for access. Requests for access to open records may be made in writing, in person, by facsimile, email, or other electronic means or by telephone. The board shall post information for making such requests in a manner reasonably calculated to apprise the public of that information. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, email address, and telephone number of the person requesting the information to facilitate the board's response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

25.3(4) and 25.3(5) No change.

25.3(6) Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency 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. If feasible, the custodian of a record may provide for the electronic examination and copying of a public record in lieu of requiring in-person examination and copying of a public record.

25.3(7) No change.

ITEM 19. Amend subrule 25.14(7) as follows:

25.14(7) Waivers and variances. Requests for waivers ~~and variances~~, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

ITEM 20. Amend **193F—Chapter 26**, title, as follows:
MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY MILITARY SERVICE MEMBERS LICENSURE OF PERSONS LICENSED IN OTHER JURISDICTIONS

ITEM 21. Adopt the following **new** definition of "Issuing jurisdiction" in rule **193F—26.1(272C)**:
"Issuing jurisdiction" means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 22. Rescind the definition of “Spouse” in rule **193F—26.1(272C)**.

ITEM 23. Amend rule 193F—26.3(272C) as follows:

193F—26.3(272C) Veteran and spouse of active duty military service member reciprocity.

26.3(1) A veteran ~~or spouse~~ with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran ~~or spouse~~ must pass any examinations required for licensure to be eligible for licensure through reciprocity and will be given credit for examinations previously passed when consistent with board laws and rules on examination requirements. A fully completed application for licensure submitted by a veteran ~~or spouse~~ under this rule shall be given priority and shall be expedited.

26.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant’s status as a veteran under Iowa Code section 35.1(2) ~~or spouse of an active duty member of the military forces of the United States~~.

26.3(3) to 26.3(5) No change.

26.3(6) An applicant who is aggrieved by the board’s decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a nondisciplinary license denial contested case ~~(administrative hearing)~~ proceeding as provided in rule 193F—20.39(546,543D,272C) and may participate in ~~a contested case~~ the hearing by telephone. A request for a contested case proceeding shall be made within 30 days of issuance of the board’s decision. ~~The provisions of 193F—Chapter 20 shall~~ board’s rules governing nondisciplinary license denial contested case hearings will apply, except that no fees or costs shall be assessed against the applicant in connection with a contested case conducted pursuant to this subrule.

ITEM 24. Adopt the following new rule 193F—26.4(272C):

193F—26.4(272C) Licensure of persons licensed in other jurisdictions.

26.4(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 shall 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, shall 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 for at least one year.

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 requirements, and the issuing jurisdiction verifies that the person met those requirements in order to be licensed in that issuing jurisdiction. Generally, given federal mandates, the minimum educational and experience requirements to become certified as a real estate appraiser are substantially the same nationwide within the applicable classification and scope of practice.

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d. The person previously passed an AQB-approved examination as required 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 shall 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 shall be the same as the fees for reciprocal licensure, including as required by rules 193F—10.1(543D), 193F—12.1(543D), and 193F—12.3(543D).

i. The person does not have a criminal history that would prevent the person from holding the license, certificate, or registration applied for in this state.

26.4(2) An individual applying for licensure under this rule must 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) Pay check 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.

26.4(3) In order to be considered a sufficient application, an application for licensure under this rule must contain or disclose all of the information referred to or required by subrule 26.4(1) and be accompanied by all applicable fees, proof or documentation required by subrule 26.4(2) or otherwise required in the forms provided by the board, 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.

26.4(4) The board shall make the determination of whether to issue a certificate or registration 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.

26.4(5) A person issued a certification or registration under this rule shall be subject to the laws regulating the person's practice in this state, including Iowa Code chapter 543D, the administrative rules of the board, and the Uniform Standards of Professional Appraisal Practice, and is subject to the jurisdiction of the board.

26.4(6) An applicant who is aggrieved by the board's decision to deny an application for a license under this rule may request a nondisciplinary license denial contested case hearing as provided in rule 193F—20.39(546,543D,272C) and may participate in the hearing by telephone. A request for a

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

nondisciplinary license denial contested case hearing shall be made within 30 days of issuance of the board's decision.

ARC 5260C

SECRETARY OF STATE[721]

Notice of Intended Action

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

The Secretary of State hereby proposes to amend Chapter 43, "Notarial Acts," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 9B.27.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 9B.

Purpose and Summary

This rule making removes the training requirement for notary publics who do not wish to perform notarial actions under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, Senate File 475, section 6. Training for notaries public who do not wish to perform remote notarial acts will continue to be offered and recommended by the Secretary of State's Office but will no longer be mandatory.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Molly Widen
Office of the Secretary of State
Lucas State Office Building, First Floor
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.5864
Email: molly.widen@sos.iowa.gov

SECRETARY OF STATE[721](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 5259C**, IAB 11/4/20). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

ARC 5246C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

The Department of Transportation hereby proposes to amend Chapter 4, “Public Records and Fair Information Practices,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 305.15 and 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 22.4 and 804.29.

Purpose and Summary

This proposed rule making conforms Chapter 4 with recent amendments to the Iowa Code. 2020 Iowa Acts, House File 2627, section 33, amends Iowa Code section 22.4 to clarify that public records may be requested in person, in writing, by telephone, or by electronic means. The Department’s practice already allows for these methods. 2020 Iowa Acts, House File 2474, section 1, amends Iowa Code section 804.29 regarding the confidentiality of information filed with the court used to secure an arrest warrant. During the confidentiality period, access to such information can be expressly restricted by court order.

The proposed amendments also clarify subrule 4.3(6) concerning security of records to state that, without permission from the custodian, a record copy may not be removed from the place where it is available and the custodian shall place at least one certified copy in the file if the original record is released.

Fiscal Impact

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

TRANSPORTATION DEPARTMENT[761](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy Bureau
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on November 30, 2020, via conference call from 1 to 2 p.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on November 24, 2020, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **4.3(1)“b”** as follows:

b. Notwithstanding paragraph “a” of this subrule, any request that may be related to a potential or an actual tort claim or other litigation shall be submitted to ~~the following address:~~ General Counsel, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. If the custodian receives a request of this nature, the custodian shall forward the request to the department's general counsel.

ITEM 2. Amend subrule 4.3(3) as follows:

4.3(3) Form of request. A request for access to a record shall reasonably describe the record requested. A request for access to an open record may be made ~~orally or in person,~~ in writing, by telephone, or by electronic means. A requester shall not be required to give reasons for requesting an open record.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 3. Amend subrule 4.3(6) as follows:

4.3(6) Security of records. No person may, without permission from the custodian, search agency files or remove any record copy from the place where it is made available. The custodian shall supervise the examination and copying of records and protect the records from damage and disorganization. Original paper records shall be released from department custody only upon court order. At The custodian shall place at least one certified copy shall be retained in the file if the original record is released.

ITEM 4. Amend subrule 4.9(6) as follows:

4.9(6) Unless otherwise ordered by the court, all information filed with the court for the purpose of securing a warrant for an arrest including, but not limited to, a citation and affidavits, until such time as a peace officer has made the arrest and has made the officer's return on the warrant, or the defendant has made an initial appearance in court. (Iowa Code section 804.29)

a. However, the information in the record may be disseminated without court order during the course of official duties to the persons authorized in Iowa Code section 804.29 unless access to such information is expressly denied by court order.

b. Reserved.

ARC 5245C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to the adopt-a-highway program and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 121, "Adopt-A-Highway Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 307.24.

Purpose and Summary

The proposed amendments to Chapter 121 include references to the Department's website and the Maintenance Bureau for information on the Adopt-A-Highway Program. Other proposed amendments reflect the Department's current electronic application process for prospective sponsors to participate in the Adopt-A-Highway Program and specify that the sponsors are only responsible for litter pickup for a designated segment of highway because work in the right-of-way, such as installation and maintenance of native plants or other landscape activities, is approved through a different process.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

TRANSPORTATION DEPARTMENT[761](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy Bureau
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on November 30, 2020, via conference call from 9 to 10 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on November 24, 2020, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—121.2(307) as follows:

761—121.2(307) Information and location. ~~Information and application forms relating to the adopt-a-highway program may be obtained by contacting the local maintenance office for the name of the person administering the program in the local area, or: Office of online at www.iowadot.gov. Assistance is available by mail from the Maintenance Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010 or by telephone at (515)239-1971. Applications shall be submitted to the person administering the program in the local area.~~

ITEM 2. Amend rule 761—121.3(307) as follows:

761—121.3(307) Program guidelines.

121.3(1) The adopt-a-highway program allows individuals or groups to assume responsibility for performing litter pickup for a specific segment of highway.

121.3(2) All primary roads, including interstate highways, under the jurisdiction of the department shall be eligible for participation in the adopt-a-highway program.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 3. Rescind and reserve rule **761—121.5(307)**.

ITEM 4. Amend subrule 121.6(1) as follows:

121.6(1) Application. ~~Form 810105, "Application to Adopt A Highway," includes the agreements to be signed by the sponsor and the department and lists the responsibilities of both the sponsor and the department. The adopt-a-highway webpage located on the department's website at www.iowadot.gov contains a link to an online adopt-a-highway permit application form. After a prospective sponsor applies online, the department will review the application and contact the prospective sponsor by telephone or email.~~

ARC 5244C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to rights-of-way and primary road extensions and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 150, "Improvements and Maintenance on Primary Road Extensions," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 306.4 and 306.42.

Purpose and Summary

This proposed rule making amends subrules 150.2(1) and 150.3(1) to continue the requirement that a city shall still be responsible for providing, without cost to the Department, all necessary rights-of-way that involve dedicated streets or alleys. However, the proposed amendments to the subrules modify the requirement that a city provide all necessary rights-of-way that involve other city-owned lands, except parklands, by stating that a city "may" (rather than "shall") be responsible for providing them. This will enable a city to negotiate the transfer of parcels of land, instead of donating them outright to the Department.

Other proposed amendments to Chapter 150 update two implementation sentences to add a reference to Iowa Code section 306.42, clarify terminology regarding road type, reflect the current version of an American Association of State Highway and Transportation Officials (AASHTO) publication, and correct a bureau name.

Fiscal Impact

The fiscal impact cannot be determined. The proposed amendments that may incur some fiscal impact to the Department and cities are subrules 150.2(1) and 150.3(1). The level of fiscal impact will depend on three highly variable factors: the number of projects that would be likely to have an impact on city land in any given period, the size and value of the parcels in question, and the decision of the affected city as to whether the city would choose to donate the parcels to the Department or negotiate a sale with the Department instead. The potentially negative fiscal impact to the Department and potentially positive impact to cities depend on how those three variables interact.

Jobs Impact

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

TRANSPORTATION DEPARTMENT[761](cont'd)

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Tracy George
 Department of Transportation
 DOT Rules Administrator, Strategic Communications and Policy Bureau
 800 Lincoln Way
 Ames, Iowa 50010
 Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on November 30, 2020, via conference call from 10:30 to 11:30 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on November 24, 2020, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 150.2(1) as follows:

150.2(1) Construction. Except as otherwise provided, the department shall be responsible for all right-of-way and construction costs associated with the construction of ~~freeways and their~~ freeway extensions.

~~a.~~ a. The city shall be responsible for providing, without cost to the department, all necessary ~~right-of-way which involves:~~

~~(1) Dedicated rights-of-way that involve dedicated streets or alleys, and.~~

~~(2) b.~~ b. Other The city may be responsible for providing, without cost to the department, all necessary rights-of-way that involve other city-owned lands, except parklands, subject to the condition that the department may reimburse the city for the functional replacement value of improved property and advanced purchases negotiated by the city for project purposes.

~~b. c.~~ c. Outside the access control limits, the department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction in the

TRANSPORTATION DEPARTMENT[761](cont'd)

proportion that the street right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be responsible for the remaining portion of ~~storm sewer~~ storm-sewer costs not paid for by the department.

e. d. The department shall be responsible for all storm-sewer related costs within the access control limits.

ITEM 2. Amend subrule 150.2(2), introductory paragraph, as follows:

150.2(2) Maintenance. The department shall enter into an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, the maintenance responsibilities of freeway extensions within the corporate city limits, including corporate line roads, shall be as follows:

ITEM 3. Amend rule ~~761~~—**150.2(306)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 306.4, 306.42, 313.4, 313.5, 313.21 to 313.24, 313.27, 313.36, 314.5 and 314.6 and chapter 306A.

ITEM 4. Amend subrule 150.3(1) as follows:

150.3(1) Construction.

a. The department shall be responsible for all right-of-way and construction costs to construct nonfreeway primary ~~highways and their~~ highway extensions to the minimum design criteria as established by the department. Construction improvement costs beyond minimum design criteria shall be the responsibility of the city, as specified in the project agreement. Minimum design criteria shall be in accordance with “A Policy on Geometric Design of Highways and Streets, 2011 2018” (~~Sixth~~ Seventh Edition AASHTO Green Book).

b. The city shall be responsible for providing, without cost to the department, all necessary ~~right-of-way which involves:~~

(1) ~~Dedicated~~ rights-of-way that involve dedicated streets or alleys, ~~and.~~

(2) *c.* ~~Other~~ The city may be responsible for providing, without cost to the department, all necessary rights-of-way that involve other city-owned lands, except parklands, subject to the condition that the department may reimburse the city for the functional replacement value of improved property and advanced purchases negotiated by the city for project purposes.

e. d. The city shall take all necessary legal action to discontinue and prohibit any past or present use of project ~~right-of-way~~ rights-of-way for private purposes. The city shall prevent any future encroachment or obstruction within the limits of project ~~right-of-way~~ rights-of-way.

d. e. The department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction and construction of local service roads developed as a part of the construction or reconstruction of the through traffic lanes in the proportion that the right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be responsible for the remaining portion of ~~storm sewer~~ storm-sewer costs not paid for by the department.

e. f. Unless otherwise mutually agreed to and specified in the project agreement, the department shall be responsible for the cost of ~~right-of-way~~ acquiring rights-of-way and construction of local service roads developed as a part of the construction or reconstruction of the through traffic lanes.

ITEM 5. Amend subrule 150.3(2), introductory paragraph, as follows:

150.3(2) Maintenance. The department shall enter into an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, the maintenance responsibilities of nonfreeway primary highway extensions within the corporate city limits, including corporate line roads, shall be as follows:

ITEM 6. Amend rule ~~761~~—**150.3(306)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 306.4, 306.42, 313.5, 313.21 to 313.24, 313.27, 313.36, 314.5, 314.6 and 321E.3 and chapter 306A.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 7. Amend subrule 150.5(1) as follows:

150.5(1) Waivers. The director of transportation may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the Rules Administrator, Strategic Communications and Policy Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at iowadot.gov/administrativerules.

ARC 5266C

UTILITIES DIVISION[199]

Notice of Intended Action

Proposing rule making related to restoration of agricultural lands during and after pipeline construction and providing an opportunity for public comment

The Utilities Board hereby proposes to rescind Chapter 9, “Restoration of Agricultural Lands During and After Pipeline Construction,” Iowa Administrative Code, and to adopt a new Chapter 9 with the same title.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 479.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 479B.

Purpose and Summary

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). Based upon a review of stakeholder comments and the Board's review of various dockets, the Board has concluded that the best course for addressing the rules for the restoration of agricultural land during and after pipeline construction is for the Board to rescind the existing Chapter 9 and adopt a new Chapter 9. The proposed rule making reorganizes the chapter, retains necessary provisions, and introduces new provisions to address issues that have arisen in various dockets.

On October 16, 2020, the Board issued an order commencing rule making. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2020-0009.

Fiscal Impact

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

Jobs Impact

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

Waivers

No waiver provision is included in the proposed rules because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 9.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

UTILITIES DIVISION[199](cont'd)

Iowa Utilities Board
 Electronic Filing System (EFS) at efs.iowa.gov
 Utilities Division
 Phone: 515.725.7337
 Email: efshelpdesk@iub.iowa.gov

Public Hearing

An oral presentation at which persons may present their views orally or in writing will be held as follows:

December 1, 2020
 1:30 to 4:30 p.m.

Board Hearing Room
 1375 East Court Avenue
 Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind 199—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
 RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE
 CONSTRUCTION

199—9.1(479,479B) General information.

9.1(1) Authority and purpose. The rules in this chapter are adopted by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29 and 479B.20 to establish standards for the restoration of agricultural lands during and after pipeline construction. These rules constitute the minimum standards for restoration of agricultural lands disturbed by pipeline construction. These rules do not apply to land located within city boundaries, unless the land is used for agricultural purposes, or to interstate natural gas pipelines.

When a project-specific land restoration plan is required pursuant to Iowa Code section 479.29(9) or 479B.20(9), following notice and comment, the board may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project. Where a project-specific land restoration plan is not required pursuant to Iowa Code section 479.29(9) or 479B.20(9), the rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction.

9.1(2) Definitions. The following words and terms, when used in these rules, shall have the meanings indicated below:

“*Affected person*” means any person with a legal right or interest in the property, including, but not limited to, a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

UTILITIES DIVISION[199](cont'd)

“Agricultural land” means any land devoted to agricultural use, including, but not limited to, land used for crop production, cleared land capable of being cultivated, hay land, pasture land, managed woodlands and woodlands of commercial value, truck gardens, farmsteads, commercial agricultural-related facilities, feedlots, rangeland, livestock confinement systems, land on which farm buildings are located, and land in government set-aside programs.

“Board” means the utilities board within the utilities division of the department of commerce.

“County inspector” means a professional engineer who is licensed under Iowa Code chapter 542B, who is familiar with agricultural and environmental inspection requirements, and who is designated by the county board of supervisors to be responsible for completing an on-site inspection for compliance with this chapter and Iowa Code chapters 479 and 479B.

“Drainage structures” or *“underground improvements”* means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

“Hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

“Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“Pipeline” means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, or hazardous liquid, within or through Iowa.

“Pipeline company” means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines.

“Pipeline construction” means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a pipeline that disturbs agricultural land, but shall not include work performed during an emergency or tree clearing completed on land under easement with written approval from the landowner. Emergency means a condition involving clear and immediate danger to life, health, or essential services, or a risk of a potentially significant loss of property. When the emergency condition ends, pipeline construction will be in accordance with these rules.

“Proper notice to the county inspector” means that the pipeline company and its contractors shall keep the county inspector continually informed of the work schedule and any changes to the schedule, and shall provide at least 24 hours’ written notice before commencing or continuing any construction activity which requires inspection by the county inspector, including, but not limited to, right-of-way staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, tile screening, tile repairs, backfilling, decompaction, cleanup, restoration, or testing at any project location. The pipeline company may request that the county inspector designate a person to receive such notices. If proper notice is given, construction shall not be delayed due to a county inspector’s failure to be present on site.

“Soil conservation practices” means any land conservation practice recognized by federal or state soil conservation agencies, including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

“Soil conservation structures” means any permanent structure recognized by federal or state soil conservation agencies, including, but not limited to, toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

“Surface drains” means any surface drainage system, such as shallow surface field drains, grassed waterways, open ditches, or any other conveyance of surface water.

“Till” means to loosen the soil in preparation for planting or seeding by plowing, chiseling, disking, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

“Topsoil” means the uppermost layer of the soil with the darkest color or the highest content of organic matter, generally referred to as the “A” horizon. In areas where the “A” horizon is determined by a certified professional soil scientist to be less than 12 inches, the topsoil depth shall include both the “A” and the “Bw” horizons as determined by the March 2017 United States Department of Agriculture Soil Survey Manual. Topsoil depth is to be determined under the supervision of a certified professional soil scientist.

UTILITIES DIVISION[199](cont'd)

“*Wet conditions*” means adverse soil conditions due to rain events, antecedent moisture, or ponded water, where the passage of construction equipment may cause rutting that mixes topsoil and subsoil, may prevent the effective removal or replacement of topsoil and subsoil, may prevent proper decompaction, or may damage underground tile lines.

199—9.2(479,479B) Filing of land restoration plans. Pursuant to Iowa Code sections 479.29 and 479B.20, a land restoration plan is required for any pipeline construction that requires a permit from the board and for any proposed amendment to an existing permit that involves pipeline construction, relocation, or replacement. The land restoration plan shall be filed with the appropriate petition and be identified as Exhibit I.

9.2(1) Content of plan. A land restoration plan shall include, but not be limited to, the following:

- a. A brief description of the purpose and nature of the pipeline construction project.
- b. A description of the sequence of events that will occur during pipeline construction.
- c. A description of how the pipeline company will comply with rules 199—9.4(479,479B) and 199—9.5(479,479B).
- d. The point of contact for landowner inquiries or claims as provided for in rule 199—9.5(479,479B).
- e. A unique identification number that follows a linearly sequential pattern on each tract of land over which the pipeline will be constructed.

9.2(2) Plan variations. The board may by waiver allow variations from the requirements in this chapter if the pipeline company requesting a waiver is able to satisfy the standards set forth in rule 199—1.3(17A,474,476) and if the alternative methods proposed by the pipeline company would restore the land to a condition as good or better than provided for in this chapter.

9.2(3) Mitigation plans and agreements. Preparation of a separate land restoration plan may be waived by the board where a pipeline company enters into an agricultural impact mitigation plan or similar agreement with the appropriate agencies of the state of Iowa that satisfies the requirements of this chapter. If a mitigation plan or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

199—9.3(479,479B) Procedure for review of plan.

9.3(1) Timing. The board will review the proposed land restoration plan at the same time it reviews the petition. Objections to the proposed plan shall be filed as part of the permit proceeding. The pipeline company shall modify the plan as required by the board.

9.3(2) Distributing approved plan. After the board has approved the plan as part of the board’s review and approval of the petition, but prior to construction, the pipeline company shall provide copies of the final plan approved by the board to all landowners of property that will be disturbed by the construction, the county board of supervisors in each county affected by the project, the county engineer of each affected county, and to the county inspector in each affected county.

199—9.4(479,479B) Staking and clearing of agricultural land.

9.4(1) Easement staking. The county inspector shall be present during the staking of the easement.

9.4(2) Trees and brush. If trees are to be removed from the easement, the pipeline company shall consult with the landowner to determine if there are trees of commercial or other value to the landowner.

a. If there are trees of commercial or other value to the landowner, the pipeline company shall allow the landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to commencement of land clearing, or if the landowner does not want to retain ownership of the trees, the pipeline company shall hire a forester with local expertise to appraise the commercial value of any timber to be cut for construction of the pipeline. The pipeline company shall compensate the landowner for the full appraised commercial value of any timber removed. In no event shall any trees be left on or adjacent to the easement. The pipeline company shall remove all cleared trees and debris from the easement.

UTILITIES DIVISION[199](cont'd)

b. If the trees to be cleared have been determined to have no commercial or other value to the landowner and there is no negotiated agreement between the pipeline company and the landowner for the disposition of the trees in advance of clearing of the easement, removal and disposal of the material shall be completed at the discretion of the pipeline company.

9.4(3) Fencing. The pipeline company may remove all field fences and gates during clearing of the easement and may construct temporary fences and gates where necessary.

199—9.5(479,479B) Restoration of agricultural lands.**9.5(1) Topsoil survey.**

a. Prior to the removal of any topsoil, the pipeline company shall direct that a topsoil survey shall be performed under the supervision of a certified professional soil scientist across the full extent of the easement. A minimum of three soil depths shall be physically measured in the field at each cross section as follows: (1) one on the left edge of the easement; (2) one at 15 feet of the centerline of the pipeline on the working side of the right-of-way; and (3) one on the right edge of the working easement. Cross sections shall be taken a minimum of every 500 linear feet for the full extent of the easement. Each parcel of land shall have a minimum of two cross sections.

b. The pipeline company shall provide the results of the topsoil survey to the county board of supervisors, county inspector, county engineer, and affected persons at least six weeks prior to commencing construction.

9.5(2) Topsoil separation and replacement.

a. Removal. Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with pipeline construction unless otherwise provided in these rules. The actual depth of the topsoil, as determined by a topsoil survey, shall be stripped from the full extent of the easement. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope or contour is significantly altered to facilitate construction. Topsoil removal shall not occur during wet conditions.

b. Soil storage. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The stored topsoil and subsoil shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or be otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

c. Stockpile stabilization. Topsoil stockpiles shall be stabilized with seeding and mulch within 14 calendar days of stockpiling. Between October 15 and March 15, soil tackifier shall be used in place of seeding and mulch.

d. Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods that do not require the opening of a trench. If provided for in a written agreement between the pipeline company and the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

e. Backfill. The topsoil and subsoil shall be replaced in the reverse order in which they were excavated from the trench. The depth of the replaced topsoil shall conform as near as possible to the depth of topsoil that was removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as near as possible.

9.5(3) Pumping of water from open trenches.

a. In the event it becomes necessary to pump water from open trenches, the pipeline company shall pump the water in a manner that avoids damaging adjacent agricultural land. Damages from pumping water from trenches include, but are not limited to, inundation of crops and depositing of sediment in fields, pastures, and surface drains.

b. If water-related damages result from pumping water from trenches, the pipeline company shall either compensate the landowner for the damages or restore the land, pasture, surface drains, or similar land, to their preconstruction condition, at the landowner's discretion.

UTILITIES DIVISION[199](cont'd)

c. Written permission from the landowner is required before the pipeline company can pump water from trenches onto adjacent land.

d. All pumping of water shall comply with existing state drainage laws, local ordinances, and federal statutes.

9.5(4) Temporary and permanent repair of drain tile.

a. *Pipeline clearance from drain tile.* Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. *Temporary repair.* The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or which subsequently begins to flow shall be temporarily repaired as soon as practicable, and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

(2) Any underground drain tile damaged, cut, or removed and found to not be flowing shall have the upstream exposed tile line screened or otherwise protected to prevent the entry of foreign material and small animals into the tile system. The downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if water level rises in the trench.

c. *Marking.* Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

d. *Permanent repairs.* Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed within 14 days after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. The county inspector shall inspect each permanent repair for compliance with this chapter. If proper notice is given, construction shall not be delayed due to a county inspector's failure to be present on site. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.

(2) Only unobstructed tile shall be used for replacement.

(3) The tile furnished for replacement purposes shall be of a quality, size, and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced using a laser transit, or similar instrument, to ensure that the tile's proper gradient and alignment are restored, except where relocation or rerouting is required for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

(6) Before completing permanent tile repairs, all tile lines shall be examined visually by televising on both sides of the trench over the full extent of the working easement to check for tile that might have been damaged or misaligned by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction.

e. *Backfilling.* The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The county inspector shall inspect that backfill for compliance with this chapter. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

f. *Subsurface drainage.* Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline

UTILITIES DIVISION[199](cont'd)

construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

9.5(5) Removal of rocks and debris from the easement.

a. Removal. The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile or above the frost line. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads and shall remove any large rocks or debris that may have rolled or blown from the right-of-way or fallen from vehicles.

b. Disposal. Rock that cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or treated by appropriate in situ remediation.

9.5(6) Restoration after soil compaction and rutting.

a. Agricultural restoration. Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches deep on other lands and shall be performed under soil moisture conditions that result in a maximum standard penetration test (SPT) reading of 300 psi pursuant to ASTM D1586-11 performed by a qualified person. Decompaction shall not occur in wet conditions. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

b. Rutted land restoration. Rutted land shall be graded and tilled until restored as near as practical to its preconstruction condition. Rutting shall be remedied before any topsoil that was removed is replaced.

9.5(7) Restoration of terraces, waterways, and other erosion control structures. Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing prior to the time of pipeline construction. Any drain tiles or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. The county inspector shall inspect restoration of terraces, waterways, and other erosion control structures for compliance with this chapter. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

9.5(8) Revegetation of untilled land.

a. Crop production. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph 9.5(9) "b" shall apply.

b. Delayed crop production. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the

UTILITIES DIVISION[199](cont'd)

land the following year. The landowner may request ground cover where the construction is completed too late in the year for a cover crop to become established to prevent soil erosion.

c. Weed control. On any easement, including, but not limited to, construction easements and easements relating to valve sites, metering stations, and compression stations, the pipeline company shall provide for weed control in a manner that prevents the spread of weeds onto adjacent lands used for agricultural purposes. Spraying shall be done by a pesticide applicator that is appropriately licensed for spraying of pesticide in Iowa. If the pipeline company fails to control weeds within 45 days after receiving written notice from the landowner, the pipeline company shall be responsible for reimbursing all reasonable costs of weed control incurred by owners of adjacent land.

9.5(9) *Future installation of drain tile or soil conservation practices and structures.*

a. Future drain tile. The pipeline company shall consult with affected persons regarding plans for future drain tile installation. Where an affected person provides the pipeline company with written plans prepared by a qualified tile technician for future drain tile improvements before an easement is secured, the pipeline shall be installed at a depth which will allow proper clearance between the pipeline and the proposed future tile installation.

b. Future practices and structures. The pipeline company shall consult with any affected person's plans for future use or installation of soil conservation practices or structures. Where an affected person provides the pipeline company with a design for such practice or structure prepared by a qualified technician before an easement is secured, the pipeline shall be installed at a depth that will allow for future installation of the planned soil conservation practice or structure and that will retain the integrity of the pipeline.

9.5(10) *Restoration of land slope and contour.* Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as near as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by the pipeline company by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished. The county inspector shall inspect restoration of land slope and contour for compliance with this chapter.

9.5(11) *Restoration of areas used for field entrances or temporary roads.* Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.5(10) and deep tilled as required by subrule 9.5(6). If by agreement, or at landowner request, and subject to any necessary approval by local public road authorities, a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition. The county inspector shall inspect restoration of areas used for field entrances or temporary roads for compliance with this chapter.

9.5(12) *Construction in wet conditions.* The county inspector shall determine when construction should not proceed in a given area due to wet conditions. Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed or underground drainage structures may be damaged. To facilitate construction in wet soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way, install mats or padding, or use other methods acceptable to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule 9.5(2).

199—9.6(479,479B) Designation of a pipeline company point of contact for landowner inquiries or claims. For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for inquiries or claims from affected persons. The designation shall include the name of an individual to contact and a toll-free telephone number and address through which that person can be reached. The pipeline company shall also provide the name of and contact information for

UTILITIES DIVISION[199](cont'd)

the county inspector. This information shall be provided to all affected persons prior to commencement of construction. Any change in the point of contact shall remain available for all affected persons for at least one year following completion of construction and for affected persons with unresolved damage claims until such time as those claims are settled.

199—9.7(479,479B) Separate agreements. This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing, and the pipeline company shall provide a copy to the county inspector.

199—9.8(479,479B) Notice of violation and halting construction.

9.8(1) Notice of violation. If the county inspector identifies a violation of the standards adopted in this chapter, Iowa Code section 479.29 or 479B.20, or a separate agreement between the pipeline company and the landowner, the county inspector shall give verbal notice, followed by written notice, to the pipeline company and the pipeline company's contractor and require the pipeline company to take corrective action.

9.8(2) Halting construction. A county inspector may temporarily halt construction if construction is not in compliance with the standards adopted in this chapter, the land restoration plan, or the terms of an independent agreement between the pipeline company and landowner regarding land restoration or line location until the county inspector consults with a supervisor of the pipeline company or contractor. If, after consultation with a supervisor of the pipeline company or contractor, agreement on corrective action to address the violation cannot be reached, the county inspector may submit a request to the county board of supervisors for resolution of the issue. Construction may not resume at the disputed location either (1) until the county inspector and supervisor of the pipeline company reach an agreement on a resolution or (2) where the board of supervisors has been contacted, until the board of supervisors has responded or after one business day after contact by the county inspector. If a resolution is not reached, construction may continue; however, the pipeline company will be responsible for any damages or for correcting any violation.

199—9.9(479,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29 and 479B.20, including giving proper notice before staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, silt screening, tile repair or backfilling, decompaction, cleanup, restoration, or testing of any easement. If the pipeline company or its contractor does not comply with the requirements of Iowa Code section 479.29 or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken. The county board of supervisors may also file a complaint with the board seeking imposition of civil penalties.

199—9.10(479,479B) Project completion. The county inspector for each county affected by the pipeline project shall recommend to the county board of supervisors that the pipeline project be considered complete upon completion of restoration of all affected agricultural lands and 70 percent growth is established in locations requiring seeding after receiving written notification by the pipeline company to the same effect. The county board of supervisors shall determine whether the project is completed.

199—9.11(479,479B) Document submittal. Once a project is completed, project documents shall be submitted as follows:

9.11(1) Document turnover. The county inspector shall submit to the county board of supervisors and the pipeline company copies of inspection reports; tile reports and maps; punch lists; notice of violation documents; decompaction agreements; separate agreements, including those that excuse the pipeline

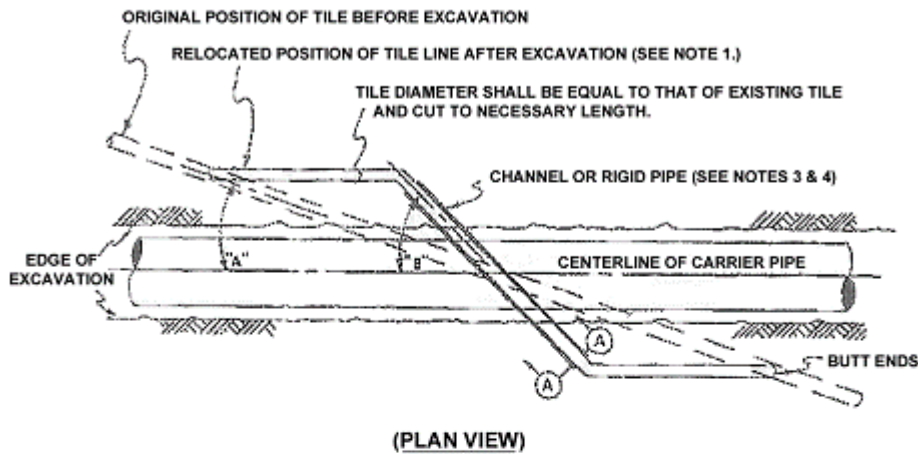
UTILITIES DIVISION[199](cont'd)

company from certain construction responsibilities; and special landowner agreements. The documents shall also be available for inspection by the board upon request.

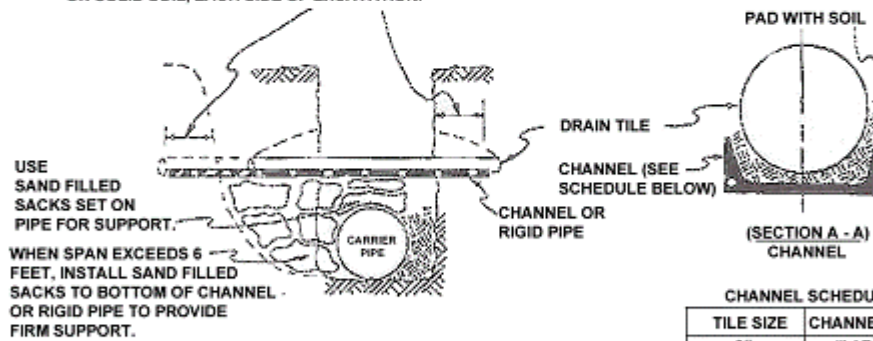
9.11(2) As-built drawings. The pipeline company shall provide the county inspector and affected landowners with copies of pipe alignment as-built drawings and underground drain tile as-built drawings, including the Global Positioning System location of tile.

Drawing No. IUB PL-1

RESTORATION OF DRAIN TILE



20" MINIMUM LENGTH OF CHANNEL OR RIGID PIPE SUPPORT ON SOLID SOIL, EACH SIDE OF EXCAVATION.



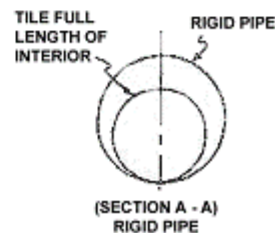
(METHOD OF SUPPORT -- ELEVATION)

CHANNEL SCHEDULE

TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 6.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 15.3#

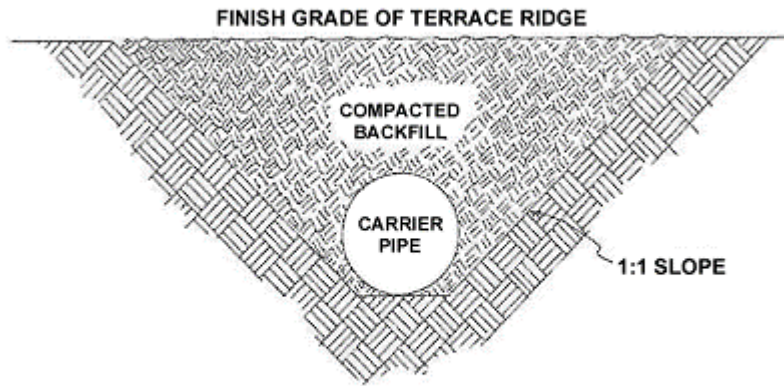
NOTES:

1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



Drawing No. IUB PL-2

RESTORATION OF TERRACE



NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

These rules are intended to implement Iowa Code sections 479.29 and 479B.20.

ARC 5267C

UTILITIES DIVISION[199]

Notice of Intended Action

Proposing rule making related to electric vehicle charging service and providing an opportunity for public comment

The Utilities Board hereby proposes to amend Chapter 20, "Service Supplied by Electric Utilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.1 and 476.26.

Purpose and Summary

On November 12, 2019, the Iowa Administrative Rules Review Committee (ARRC) considered the Board's adoption of rule 199—20.20(476). By a vote of six to three, the ARRC voted to object to rule 199—20.20(476). The Board is initiating this rule making with the intent of adopting an electric vehicle charging service rule that does not contain the defects identified by the ARRC.

The Board issued an order on October 14, 2020, commencing this rule making. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2020-2020.

UTILITIES DIVISION[199](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on December 8, 2020. Comments should be directed to:

Iowa Utilities Board
Electronic Filing System (EFS) at efs.iowa.gov
Phone: 515.725.7337
Email: efshelpdesk@iub.iowa.gov

Public Hearing

An oral presentation at which persons may present their views orally or in writing will be held as follows:

December 21, 2020
1 to 4 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind rule 199—20.20(476) and adopt the following **new** rule in lieu thereof:

199—20.20(476) Electric vehicle charging service.

20.20(1) A commercial or public electric vehicle charging station is not a public utility under Iowa Code section 476.1 if the charging station receives all electric power from the electric utility in whose service area the charging station is located. If an electric vehicle charging station obtains electric power from a source other than the electric utility, the determination of whether the commercial or public electric vehicle charging station is a public utility shall be resolved by the board.

UTILITIES DIVISION[199](cont'd)

20.20(2) A person, partnership, business association, or corporation, foreign or domestic, furnishing electricity to a commercial or public electric vehicle charging station shall comply with Iowa Code section 476.25 and, if applicable, with the terms and conditions of the public utility's tariffs or service rules.

20.20(3) A rate-regulated public utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a commercial or public electric vehicle charging station.

20.20(4) Electric utilities and entities providing commercial or public electric vehicle charging service shall comply with all applicable statutes and regulations governing the provision of electric vehicle charging service, including but not limited to all taxing requirements, and shall, if necessary, file all appropriate tariffs.

ARC 5259C

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Rule making related to notary public training

The Secretary of State hereby amends Chapter 43, “Notarial Acts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 9B.27.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 9B.

Purpose and Summary

This rule making removes the training requirement for notary publics who do not wish to perform notarial actions for a remotely located individual pursuant to Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, Senate File 475, section 6. Training for notaries public who do not wish to perform remote notarial acts will continue to be offered and recommended by the Secretary of State’s Office but will no longer be mandatory.

*Reason for Adoption of Rule Making Without
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary or impractical because emergency adoption was approved by the Administrative Rules Review Committee and because emergency adoption removes the training requirement for notary publics who do not wish to perform notarial actions under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, Senate File 475, section 6.

In compliance with Iowa Code section 17A.4(3)“a,” the Administrative Rules Review Committee at its October 13, 2020, meeting reviewed the Secretary of State’s determination and this rule making and approved the emergency adoption.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Secretary of State also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 14, 2020, because this rule making removes the training requirement for notary publics who do not wish to perform notarial actions under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, Senate File 475, section 6.

Adoption of Rule Making

This rule making was adopted by the Secretary of State on October 13, 2020.

Concurrent Publication of Notice of Intended Action

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 5260C** to allow for public comment.

Fiscal Impact

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

SECRETARY OF STATE[721](cont'd)

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making became effective on October 14, 2020.

The following rule-making actions are adopted:

ITEM 1. Rescind paragraph **43.5(3)“a.”**

ITEM 2. Reletter paragraphs **43.5(3)“b”** and **“c”** as **43.5(3)“a”** and **“b.”**

ITEM 3. Amend relettered paragraph **43.5(3)“a”** as follows:

a. A notary public who wishes to begin performing notarial acts under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, shall, within the six-month period immediately preceding the first performance of such an act, satisfactorily complete a training course approved by the secretary of state concerning the requirements and methods for performing notarial acts for remotely located individuals and shall provide satisfactory proof to the secretary of state that the applicant has completed the course. ~~This training is in addition to that required by paragraph 43.5(3)“a.”~~

ITEM 4. Amend relettered paragraph **43.5(3)“b”** as follows:

b. An applicant for reappointment as a notary public who currently holds a notary public commission, who wishes to continue performing notarial acts under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, and who has satisfactorily completed the initial training course required by paragraph ~~43.5(3)“b”~~ 43.5(3)“a” at least one time prior to the 12-month period immediately preceding application for reappointment shall, within the 6-month period immediately preceding the deadline for application for reappointment, satisfactorily complete an update course approved by the secretary of state concerning the requirements and methods for performing notarial acts for remotely located individuals and shall provide satisfactory proof to the secretary of state that the applicant has completed the course.

[Filed Emergency 10/14/20, effective 10/14/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5247C

CORRECTIONS DEPARTMENT[201]**Adopted and Filed****Rule making related to community-based corrections and OWI programs**

The Corrections Department hereby amends Chapter 40, “Community-Based Corrections Administration,” and Chapter 47, “OWI Programs,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 904.108 and 905.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 904.513 and 905.8.

Purpose and Summary

The amendments to Chapter 40 change the time frame from two years to five years for the Department review of a district community-based correctional program. This rule making provides for follow-up on areas designated as needing improvement based on corrective action plans, which may be conducted at any time during the five-year interim. This will allow the Department to do a more thorough review and follow-up on the district’s community-based correctional program corrective action plan. The amendments to Chapter 47 make a conforming change to align the Department’s rules with the Iowa Code regarding placement for operating while intoxicated (OWI) violators sentenced to the custody of the Department but awaiting placement in a community residential substance abuse program. The Iowa Code requires OWI violators to be placed in a prison substance abuse program within 60 days of admission or as soon as practical, unlike the current administrative rule language, which uses the date of sentencing.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 26, 2020, as **ARC 5145C**. A public hearing was held on September 15, 2020, at 11 a.m. at the Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

This rule making is not identical to the published Notice. During the Board of Corrections meeting on October 2, 2020, the Board voted to add the words “or as soon as practical” to Item 8 to reflect Iowa Code section 904.513.

Adoption of Rule Making

This rule making was adopted by the Department on October 2, 2020.

Fiscal Impact

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

Jobs Impact

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

CORRECTIONS DEPARTMENT[201](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 201—Chapter 7.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **201—40.1(905)**, definitions of “Ongoing site visits” and “Team review,” as follows:

“*Ongoing site visits*” ~~shall mean~~ means any visit by the deputy director, the deputy director's designee or representatives of the office of the state auditor which shall be to assure continuing compliance with the Code of Iowa and the Iowa Administrative Code or to follow up on areas designated as needing improvement based on corrective action plans from the previous accreditation review period, and which may be conducted at any time during the ~~two-year~~ five-year interim following the most recent team review.

“*Team review*” ~~shall mean~~ means a ~~biennial~~ five-year review of overall program, policies and procedures for compliance with the Code of Iowa and the Iowa Administrative Code by one or more persons designated by the deputy director.

ITEM 2. Amend subrule 40.2(2) as follows:

40.2(2) The deputy director shall conduct or assign staff the responsibility to conduct the ~~biennial~~ five-year team review for accreditation purposes.

ITEM 3. Amend subrule 40.2(3) as follows:

40.2(3) The deputy director shall make or assign staff to make ongoing site ~~reviews~~ visits during the ~~two-year~~ five-year interim following the most recent team review in order to follow up on areas designated as needing improvement based on corrective action plans from the previous accreditation review period.

ITEM 4. Amend subrule 40.2(4) as follows:

40.2(4) The ~~biennial~~ five-year team review shall include a complete review of the following:

a. and *b.* No change.

c. Programs mandated by the Code of Iowa and any special programs approved by the department of corrections. Programs shall comply with program-specific standards developed and approved by the department of corrections with collaborative input from the judicial districts and other affected stakeholders, i.e., domestic abuse, and sex offender treatment, ~~and intensive supervision program~~.

d. No change.

e. Any regular or special evaluations of the services provided by the district department.

The ~~biennial~~ five-year team review shall be conducted as provided in the “accreditation standards for community-based corrections” and any program-specific standards, which shall be open for public inspection at the offices of the department of corrections. A proposed draft of these standards will be made available to the districts 180 days prior to the ~~biennial~~ five-year team review. The accreditation

CORRECTIONS DEPARTMENT[201](cont'd)

and program-specific final standards, and any changes in the standards, shall be made available to the district departments at least 90 days before the ~~biennial~~ five-year team review.

ITEM 5. Amend subrule 40.2(5) as follows:

40.2(5) The results of any ~~biennial~~ five-year team review will be reported to the deputy director, who shall review the results, and when a district is in adequate compliance with the Code of Iowa, the Iowa Administrative Code and the accreditation standards, the deputy director shall issue a certificate of accreditation for the following ~~two~~ five years. When a district is not in adequate compliance as provided in the accreditation standards, the deputy director will notify the chairperson of the district board and the district director of the specific deficiencies and allowable time frames for correcting the deficiencies. At the end of the period of time for bringing the deficiencies into compliance, the deputy director shall award a certificate of accreditation or shall notify the district board and proceed as provided in Iowa Code section 905.9.

ITEM 6. Amend subrule 40.2(6) as follows:

40.2(6) The ongoing site review shall include periodic assessments of the district departments and its programs as set out in 40.2(4) and shall be designed to provide evidence of continuing compliance. If at any time during the ~~two-year~~ five-year period, following the most recent team reviews, the deputy director, through information gathered in ongoing site reviews, concludes that the district department is no longer in adequate compliance may conduct or order an interim team review. If in the team review the evidence indicates serious noncompliance, the deputy director may proceed as provided in 40.2(5).

ITEM 7. Amend subrule 47.1(4) as follows:

47.1(4) All facilities and programs operated pursuant to this chapter shall be reviewed for approval by the department of corrections initially and ~~biennially~~ every five years thereafter. A district department which fails to maintain compliance with this chapter shall be subject to the provisions of Iowa Code section 905.9.

ITEM 8. Amend subrule 47.2(3) as follows:

47.2(3) Priority for placement in the treatment program shall be based on the date of ~~sentence~~ institution admission or as soon as practical unless an exception is made by the department of corrections or district department for special circumstances.

[Filed 10/14/20, effective 12/9/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5248C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to family-centered services

The Human Services Department hereby amends Chapter 80, "Procedure and Method of Payment," Chapter 133, "IV-A Emergency Assistance Program," Chapter 172, "Family-Centered Child Welfare Services," Chapter 175, "Abuse of Children," and rescinds Chapter 186, "Community Care," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 234.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 234.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

These amendments implement the federal Family First Prevention Services Act. The Family First Prevention Services Act reforms the federal child welfare financing streams. Title IV-E and Title IV-B of the Social Security Act provide for services to families that are at risk of entering the child welfare system. A core expectation under the Family First Prevention Services Act is that states must employ evidence-based interventions demonstrated to effectively strengthen and preserve connections between children and their families. The primary focus of these services is to prevent removal of children and placement into foster care. These changes will positively affect the child welfare contractors that successfully bid on contracts as the evidence-based interventions provide clear expectations of fidelity to models used in service provisions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5131C**. No public comments were received. The Department made one change to paragraph 80.2(2)“g” in Item 1 to remove a proposed sentence within the directions for filing claims that contained a confusing date. Directions for filing claims are considered procedures, and information on filing claims is sent to providers through instructional letters.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on October 8, 2020.

Fiscal Impact

There will be a cost associated with the implementation of the provisions of the Family First Prevention Services Act. Costs include Department and provider implementation activities, accreditation and licensing of providers, and increased costs for services above what the Department is currently paying. The cost of these items is uncertain given that implementation is still in process and the new services have not yet started. In addition, the Family First Prevention Services Act provides for a 50 percent federal IV-E match for eligible services, but federal guidance has not been given on which services meet the claiming criteria. As a result, the amount of the federal match and resulting state cost are also not known. In addition, access to high-quality prevention services should ultimately reduce the need for foster care services, but the timing and degree of those services are not yet known.

Jobs Impact

The current procurement for family-centered services allows for more flexibility in staff qualifications based upon selected evidence-based interventions rather than specific education and experience requirements. The flexibility in staff qualifications for the identified evidence-based interventions will most likely increase the pool of candidates for employment statewide as qualifications will be based upon skill set rather than a set standard of education and experience. The services will now be provided statewide, with a maximum of two contracts per each of the five agency service areas.

Waivers

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

HUMAN SERVICES DEPARTMENT[441](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **80.2(2)“g”** as follows:

g. Case management providers shall submit claims on Form 470-2486, Claim for Targeted Medical Care, for services billing services provided pursuant to 441—Chapter 90 and on FACS-generated claims for services provided pursuant to 441—Chapter 186 to fee-for-service members shall submit claims using a HIPAA-compliant electronic claim.

ITEM 2. Amend rule **441—133.1(235)**, definition of “Emergency assistance,” as follows:

“Emergency assistance” means any one or more of the following services provided in response to a IV-A emergency assistance application:

1. Family-centered ~~child welfare~~ services as set forth in 441—Chapter 172.
2. to 4. No change.

ITEM 3. Amend paragraph **133.3(4)“a”** as follows:

a. Family-centered ~~child welfare~~ services as established at rule 441—172.12(234) or 441—172.22(234) in 441—Chapter 172.

ITEM 4. Amend **441—Chapter 172**, title, as follows:

FAMILY-CENTERED CHILD WELFARE SERVICES

ITEM 5. Amend **441—Chapter 172**, chapter preamble, as follows:

PREAMBLE

These rules define and describe procedures for delivery of family-centered ~~child welfare~~ services. The rules describe the service definitions, and eligibility criteria, ~~contractor selection and contracting processes, performance measures, billing and payment methods, and procedures for client appeals, and service review and audit procedures.~~

ITEM 6. Rescind **441—Chapter 172, Division I**, heading.

ITEM 7. Amend rule 441—172.1(234) as follows:

441—172.1(234) Definitions.

“Agency” means the Iowa department of human services.

“Agency child welfare service case” means at least one child in a household is involved in agency services with an agency-assigned social work case manager.

“Agency worker” means the agency child welfare worker who has been assigned responsibility for a child and family’s case, either to perform a child abuse assessment, family assessment, or child in need of assistance (CINA) assessment or assume case management responsibility for ongoing agency child welfare service cases.

“Candidate for foster care” means a child who is identified in a prevention plan as being at imminent risk of entering foster care but who can remain safely in the child’s home or in a kinship placement as long as services or programs that are necessary to prevent the entry of the child into foster care are provided. “Candidate for foster care” includes a child whose adoption or guardianship arrangement is at risk of a disruption or dissolution that would result in a foster care placement.

“Child,” “children,” or *“youth”* means a person or persons who ~~meets~~ meet the definition of a child in Iowa Code section 234.1(2).

“Child abuse” means one or more of the categories of child abuse defined in Iowa Code section 232.68.

“Child abuse assessment” means an assessment process by which the agency responds to all accepted reports of child abuse that allege child abuse as defined in Iowa Code section 232.68(2)“a”(1)

HUMAN SERVICES DEPARTMENT[441](cont'd)

through (3) and (5) through (11); or that allege child abuse as defined in Iowa Code section 232.68(2)“a”(4) that also allege imminent danger, death, or injury to a child. A child abuse assessment results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

“Child in need of assistance” or “CINA” means a child adjudicated by juvenile court to be a child in need of assistance pursuant to Iowa Code section 232.2.

“Child vulnerability” means the degree that a child cannot on the child’s own avoid, negate, or minimize the impact of present or impending danger.

“Conditionally safe” means that one or more signs of present or impending danger to a child that are identified on the safety assessment form are not offset by the child’s degree of vulnerability or the caretaker’s protective capacity. A safety plan is required.

“Contractor” means a private organization authorized to do business in Iowa that has entered into a contract with the agency to provide one or more of the services defined in this chapter. “Contractor” refers to the organization that is named as the responsible party in the contract and whose authorized representative has signed the contract.

“Family assessment” means an assessment process by which the agency responds to all accepted reports of child abuse that allege child abuse as defined in Iowa Code section 232.68(2)“a”(4), but do not allege imminent danger, death, or injury to a child. A family assessment does not include a determination of whether a case meets the definition of child abuse and does not include a determination of whether criteria for placement on the registry are met.

“Family-centered services” means the services provided by contract pursuant to this chapter.

“Family preservation services” or “FPS” means short-term, intensive, home-based crisis interventions targeted to families that have children at imminent risk of removal and placement in foster care. Family preservation services combine skill-based interventions and flexibility so that services are available to families according to their individual needs.

“Family safety, risk, and permanency service” means a service that uses strategies and interventions designed to achieve safety and permanency for a child with an open agency child welfare case, regardless of the setting in which the child resides.

“Fictive kin” means a person who is unrelated to a child by blood, adoption, or marriage, but who has an emotionally significant relationship with the child or the child’s family.

“Household” means the place where a child resides.

“Kinship caregiver” means a relative or fictive kin providing care for a child.

“Non-agency-involved case” means a case in which no one in the household is involved with an agency-assigned social work case manager.

“Permanency” means a child has a safe, stable, custodial environment in which to grow up and a lifelong relationship with a nurturing caregiver.

“Protective capacities” means the family strengths or resources that reduce, control, or prevent risks from arising or from having an unsafe impact on a child.

“Risk” means the probability or likelihood that a child will experience maltreatment.

“Safe” means that no signs of present or impending danger to a child are identified or that one or more signs of present or impending danger are identified but the child’s degree of vulnerability or the caregiver’s protective capacities offset the current threat. The child is not likely to be in imminent danger of maltreatment.

“SafeCare®” means an evidence-based training curriculum for parents who are at risk or have been reported for child abuse. Through SafeCare®, parents receive weekly home visits to improve skills in several areas, including home safety, health care, and parent-child interaction.

“Safety plan service” means a service that is designed to monitor the safety of a child during the agency’s child protective assessment or child in need of assistance assessment process.

“Service area manager” means the agency official responsible for managing the agency’s programs, operations, and budget within one of the agency service areas.

“Solution Based Casework®” or “SBC” means an evidence-based, family-centered model of child welfare assessment, case planning, and ongoing casework. The goal of SBC is to work in partnership

HUMAN SERVICES DEPARTMENT[441](cont'd)

with the family to help identify the family's strengths, to focus on everyday life events, and to help the family build the skills necessary to manage difficult situations.

ITEM 8. Amend rule 441—172.2(234) as follows:

441—172.2(234) Purpose and scope. Family-centered ~~child welfare~~ services are designed to ~~achieve~~ for the child, parent, or kinship caregiver of the child when the needs of the child, parent, or kinship caregiver for the services are directly related to the safety, permanency, and or well-being for children of the child, or to preventing the child from entering foster care. The outcome of the services may be to maintain the child with a parent or in the home of the kinship caregiver, to reunify the child safely with a parent or kinship caregiver, or to achieve permanent family connections for the child.

172.2(1) Family-centered ~~child welfare~~ services provide interventions and supports ~~for~~ based on identified needs of children who and families that have come to the agency's attention because of:

- a. ~~Allegations of child abuse~~ Evaluation of the findings of a child abuse assessment report and the family's risk assessment score; or
- b. ~~Juvenile court action to adjudicate the child as a child in need of assistance.~~ The child's adjudication as a child in need of assistance pursuant to Iowa Code section 232.2; or
- c. The child's placement out of home under the agency's care and supervision.

172.2(2) Family-centered ~~child welfare~~ services shall be designed to:

- a. Identify and build on the family's strengths and enhance the family's protective capacities;
- b. Address the risk factors that affect the child's safety, permanency, and well-being; and
- c. ~~Help the~~ Strengthen family ~~become connected with connections to~~ community resources and informal support systems in order to promote greater self-reliance; and
- d. Remain culturally competent and respectful of the family's cultural, ethnic, and racial identity and values.

172.2(3) Family-centered ~~child welfare~~ services shall utilize evidence-based interventions to the greatest possible extent.

172.2(4) Family-centered services shall include the following persons:

- a. A child eligible for services under this rule, as defined by the agency;
- b. Any sibling of that child who resides in the same household at the time of service referral or moves into the household during the service delivery period; and
- c. A parent, stepparent, or kinship caregiver of the child.

172.2(5) Family-centered services shall include SBC for agency child welfare service cases and non-agency-involved cases when criteria in subrule 172.2(1) are met.

172.2(6) Based on child and family needs, a child and family with an open agency child welfare service case that are receiving SBC may also be approved to receive the following additional services, which are referred separately:

- a. SafeCare®.
- b. Family preservation services.
- c. Family team decision-making (FTDM) and youth transition decision-making (YTDM) meeting facilitation.

172.2(7) Case management. During the time that a child and the child's family are approved to receive family-centered services on an open agency child welfare service case, the agency worker shall be responsible for maintaining contact with the child and family to ensure that:

- a. The factors that present risks of harm to the safety and well-being of all children in the family are being adequately addressed; and
- b. Services and supports are in place to achieve the child's permanency goal.

ITEM 9. Amend rule 441—172.3(234) as follows:

441—172.3(234) Authorization. When the agency has approved provision of family-centered ~~child welfare~~ services for a child and family, the agency worker shall notify the contractor by issuing the referral and authorization for child welfare services form. This ~~referral~~ authorization form shall indicate:

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. The specific service category authorized (~~safety plan, family safety, risk, and permanency~~); and
 2. The duration of the authorization.
- ITEM 10. Rescind and reserve rule **441—172.4(234)**.
- ITEM 11. Rescind and reserve rule **441—172.6(234)**.
- ITEM 12. Rescind **441—Chapter 172, Division II**, heading.
- ITEM 13. Rescind **441—Chapter 172, Division II**, chapter preamble.
- ITEM 14. Rescind rules **441—172.10(234)** to **441—172.15(234)**.
- ITEM 15. Rescind **441—Chapter 172, Division III**, heading.
- ITEM 16. Rescind **441—Chapter 172, Division III**, chapter preamble.
- ITEM 17. Rescind rules **441—172.20(234)** to **441—172.25(234)**.
- ITEM 18. Rescind **441—Chapter 172, Division IV**, heading.
- ITEM 19. Rescind **441—Chapter 172, Division IV**, chapter preamble.
- ITEM 20. Rescind rules **441—172.30(234)** to **441—172.34(234)**.
- ITEM 21. Rescind the definition of “Community care” in rule **441—175.21(232,235A)**.
- ITEM 22. Rescind and reserve **441—Chapter 186**.

[Filed 10/13/20, effective 1/1/21]

[Published 11/4/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5249C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to foster care case permanency plans

The Human Services Department hereby amends Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

The federal Family First Prevention Services Act, Section 422(b)(15)(A)(vii), and 2019 Iowa Acts, House File 644, require protocols to ensure children being placed in out-of-home settings are not inappropriately diagnosed with mental illness, other emotional or behavioral disorders, medically fragile conditions or developmental disabilities. This amendment requires information in case permanency plans for children entering or already in foster care to include efforts to retain existing medical and mental health care providers as well as activities to evaluate service needs.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5130C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on October 8, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 1, 2021.

The following rule-making action is adopted:

Amend rule **441—202.1(234)**, definition of “Case permanency plan,” as follows:

“*Case permanency plan*” shall mean the plan identifying goals, needs, strengths, problems, services, time frames for meeting goals and for delivery of the services to the child and parents, objectives, desired outcomes, and responsibilities of all parties involved and reviewing progress. This includes information describing efforts to retain existing medical and mental health care providers for a child entering or in foster care and activities to evaluate service needs to avoid inappropriate diagnoses of mental illness, other emotional or behavioral disorders, medically fragile conditions, or developmental disabilities.

[Filed 10/13/20, effective 1/1/21]

[Published 11/4/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5250C**INSURANCE DIVISION[191]****Adopted and Filed****Rule making related to licensing**

The Insurance Division hereby amends Chapter 10, “Insurance Producer Licenses and Limited Licenses,” Chapter 48, “Viatical and Life Settlements,” Chapter 55, “Licensing of Public Adjusters,” and Chapter 58, “Third-Party Administrators,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 508E.19, 510.9, 522B.18 and 522C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 508E, 510, 522B and 522C and 2020 Iowa Acts, House File 426.

Purpose and Summary

The Division amends Chapters 10, 48, 55, and 58 as part of the Division’s review of rules and to implement 2020 Iowa Acts, House File 426, which allows for the Commissioner to require producers, viatical settlement brokers, viatical settlement providers, and public adjusters applying for an initial license or applying for renewal, reinstatement or reissuance of a suspended or revoked license to submit fingerprints for a criminal history check.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5129C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 2020, as **ARC 5162C**.

A public hearing was held on September 15, 2020, at 10 a.m. at the Division’s offices, Fourth Floor, Two Ruan Center, 601 Locust Street, Des Moines, Iowa. One person attended the hearing. No comments were received at the hearing. No public comments were received.

One change from the Notice has been made. Since the publication of the Notice, 2020 Iowa Acts, House File 426, has been codified. References in the rule making to House File 426 have been removed accordingly.

Adoption of Rule Making

This rule making was adopted by Douglas M. Ommen, Iowa Insurance Commissioner, on October 5, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

INSURANCE DIVISION[191](cont'd)

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 10.4(1) as follows:

10.4(1) A person whose home state is Iowa and who desires to be licensed as a producer must satisfy the following requirements:

- a. Be at least 18 years of age;
- b. Have not committed any act that is grounds for denial under subrule 10.20(4);
- c. Submit a completed uniform application;
- d. Pass an examination in the line of authority sought; ~~and~~;
- e. Pay the appropriate producer license fee; and
- f. Submit to a criminal history check pursuant to Iowa Code section 522B.5.

ITEM 2. Amend subrule 10.5(1) as follows:

10.5(1) A producer for whom Iowa is not the home state who desires to sell, solicit or negotiate insurance in Iowa must satisfy the following requirements to obtain an Iowa nonresident producer license:

- a. Be licensed and in good standing in the home state;
- b. Submit a proper request for licensure to the division through the NIPR Gateway; ~~and~~
- c. Pay the appropriate fee; and
- d. Submit to a criminal history check pursuant to Iowa Code section 522B.5A if a state and national criminal history check has not already been completed.

ITEM 3. Amend subrule 10.6(2) as follows:

10.6(2) An individual producer whose license has expired may seek reinstatement or reissuance as set forth in rule 191—10.9(522B) or 191—10.10(522B), as applicable.

ITEM 4. Amend rule 191—10.9(522B) as follows:

191—10.9(522B) License reinstatement.

10.9(1) No change.

10.9(2) A nonresident producer may reinstate an expired license up to 12 months after the expiration date by submitting a request through the NIPR Gateway and by paying a reinstatement fee and a license renewal fee. A nonresident producer who fails to apply for a license reinstatement within 12 months of the license expiration date or fails to update the nonresident producer's address pursuant to subrule 10.12(3) must apply for license reissuance.

10.9(3) A producer who has surrendered a license ~~for a nondisciplinary reason that was not in connection with a disciplinary matter~~ and stated an intent to exit the insurance business may file a request to reactivate the license. The request must be received at the division within 90 days of the date the license was placed on inactive status. The request will be granted if the former producer is otherwise eligible to receive the license. If the request is not received within 90 days, the producer must apply for a new license.

10.9(4) A producer whose license was suspended, revoked, forfeited in connection with a disciplinary matter, or forfeited in lieu of compliance is not eligible for reinstatement under this rule and must follow the procedures in rule 191—10.10(522B).

INSURANCE DIVISION[191](cont'd)

ITEM 5. Amend rule 191—10.10(522B) as follows:

191—10.10(522B) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

10.10(1) Terminology. The term “reinstatement” as used in this rule means the reinstatement of a suspended license. The term “reissuance” as used in this rule means the issuance of a new license following the revocation of a license, the suspension and subsequent termination of a license, or the forfeiture of a license in connection with a disciplinary matter, including but not limited to proceedings pursuant to rule 191—10.21(252J,272D). Disciplinary matters include, but are not limited to, being the subject of an investigation, complaint, or pending administrative action in this or any other state. This rule does not apply to the reinstatement of an expired license or the issuance of a new license that is not in connection with a disciplinary matter.

10.10(2) Application required. Any producer whose license has been revoked or suspended by order or who forfeited a license in connection with a disciplinary matter must apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture and submit to a criminal history check as required pursuant to Iowa Code section 522B.5A.

a. All proceedings for reinstatement or reissuance must be initiated by the applicant, who shall file with the commissioner an Iowa Insurance Producer Application for Reinstatement or ~~an Iowa Insurance Producer Application for Reissuance After Disciplinary Action.~~ An applicant is not eligible for reinstatement or reissuance until the applicant has satisfied the other prescribed requirements of rule 191—10.4(522B), including the timing requirements of subrule 10.4(4). An applicant may also have to submit a new or renewal producer application through the NIPR Gateway and pay any associated fee.

b. to f. No change.

g. The period of suspension shall continue, regardless of any specified suspension end date, until such time as the producer’s license is reinstated by order.

10.10(3) No change.

10.10(4) Order. An order of reinstatement or reissuance must be a written decision that incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner’s designee deems appropriate, which may include one or more of the types of disciplinary sanctions provided by Iowa Code section 522B.11. The producer’s license will be reinstated or reissued on the date of the order, unless the order specifies a different date. The order is a public record and may be disseminated in accordance with Iowa Code chapter 22.

10.10(5) No change.

10.10(6) Suspension Reinstatement in relation to expiration date. ~~When a producer’s license has been suspended for a period of time that extends beyond the producer’s license expiration date, the license terminates at the license expiration date, and the producer must request reissuance pursuant to subrule 10.10(2). However, reissuance will not be effected until the suspension period has ended. If a producer’s ordered suspension for a period of time ends prior to the producer’s license expiration date and the producer has met all applicable requirements applies for reinstatement prior to the license expiration date, the commissioner must reinstate the license as soon as practicable but no earlier than the end of the suspension period if the division determines the license should be reinstated after a complete review. However, the commissioner is not prohibited from denying an application for reinstatement or reissuance or bringing an additional immediate action if the producer has engaged in any additional violation of Iowa Code section 507B.4 or 522B.11(1) or otherwise failed to meet all of the applicable requirements.~~

10.10(7) Suspension beyond expiration date. When a producer’s license is suspended beyond the producer’s license expiration date, whether due to an ordered suspension time period or failure to apply for reinstatement prior to expiration as stated in subrule 10.10(6), the license terminates on the license expiration date and the producer must apply for reissuance pursuant to subrule 10.10(2).

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10.10(8) Application denial or additional action. The commissioner is not prohibited from denying an application for reinstatement or reissuance or bringing an additional immediate action if the producer has engaged in any additional violation of Iowa Code section 507B.4 or 522B.11(1) or otherwise failed to meet all of the applicable requirements.

ITEM 6. Amend subrule 10.12(1) as follows:

10.12(1) If a producer's name is changed, the producer must file notification with the division through the NIPR Gateway at www.NIPR.com, unless the division instructs otherwise, as instructed on the division's website, within 30 days of the name change. The notification must include the producer's:

- a. ~~Prior~~ The producer's prior name;
- b. ~~License~~ The producer's license number; and
- c. ~~New~~ The producer's new name; and
- d. A copy of a legal document with proof of the name change.

ITEM 7. Adopt the following new subrule 10.26(8):

10.26(8) The fee for a criminal history check as required pursuant to Iowa Code section 522B.5 is \$50.

ITEM 8. Amend rule 191—48.2(508E), introductory paragraph, as follows:

191—48.2(508E) Definitions. For purposes of this chapter, the definitions in Iowa Code ~~chapter 508E~~ section 508E.2 are incorporated by reference. In addition to those definitions and the definitions in rule 191—1.1(502,505), the following definitions apply:

ITEM 9. Amend paragraph **48.3(1)“a”** as follows:

a. To be considered for licensure as a viatical settlement provider pursuant to Iowa Code section 508E.3, a person must file with the commissioner a completed viatical settlement provider license application in the format prescribed by the commissioner, submit to a criminal history check pursuant to Iowa Code section 522B.5A, pay an application fee in the amount of \$100, and provide the following:

(1) Copies of the viatical settlement provider's audited financial statements for the current year and each of the previous five years. At the commissioner's discretion, the applicant also shall provide a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person, and copies of the provider's unaudited financial statements for the current year and each of the previous five years;

(2) to (4) No change.

(5) An independent business character report on the individuals listed in subparagraph (4). The business character report shall be filed directly with the commissioner by the independent third party that certified the report. The business character report shall be in a format prescribed by the commissioner and shall not be older than one year prior to the date the application is filed. For purposes of this subparagraph (5), “business character report” means a statement certified by an independent third party which has conducted a comprehensive review of the applicant's background and has indicated that the biographical information provided in the report, as completed by the applicant, has no inaccurate or conflicting information. An independent third party is one that has no affiliation with the applicant and is in the business of providing background checks or investigations. Business character reports must be current and shall not be older than one year prior to the date the application is filed. The business character report shall be in the format prescribed by the commissioner;

(6) to (8) No change.

ITEM 10. Amend paragraph **48.3(2)“a”** as follows:

a. To be considered for licensure as a viatical settlement broker pursuant to Iowa Code section 508E.3, a person must file a completed viatical settlement broker license application in the format prescribed by the commissioner, and pay an application fee in the amount of \$100, and submit to a criminal history check and pay the associated fee pursuant to Iowa Code section 522B.5A. In addition to finding compliance with Iowa Code section 508E.3, the commissioner also shall find that the applicant:

(1) to (3) No change.

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ITEM 11. Amend subparagraph **48.3(8)“b”(1)** as follows:

(1) All proceedings for reinstatement or reissuance shall be initiated by the applicant who shall file with the commissioner an application for reinstatement or reissuance of a license. As part of the application, the applicant shall submit to a criminal history check pursuant to Iowa Code section 522B.5A.

ITEM 12. Adopt the following new paragraph **48.3(12)“f”**:

f. The fee for a criminal history check as required pursuant to Iowa Code section 522B.5A is \$50.

ITEM 13. Amend rule 191—55.1(82GA, HF499), parenthetical implementation statute, as follows:

191—55.1(82GA, HF499 522C) Purpose.

ITEM 14. Amend rule 191—55.2(82GA, HF499) as follows:

191—55.2(82GA, HF499 522C) Definitions. ~~As used in this chapter~~ In addition to the definitions in Iowa Code section 522C.2 and rule 191—1.1(502,505), the following definitions apply, unless the context otherwise requires:

~~“Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or any other legal entity.~~

“Catastrophic disaster,” according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the governor of the state or district in which the disaster occurred.

~~“Commissioner” means the Iowa insurance commissioner.~~

~~“Division” means the Iowa insurance division.~~

~~“Fingerprints” means an electronic impression of the lines on a human finger taken for the purposes of identification.~~

~~“First-party claim” means a claim filed by a person insured under the insurance policy against which the claim is made the same as defined in Iowa Code section 522C.2.~~

“Home state” means the District of Columbia and any state or territory of the United States in which the public adjuster’s principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the “home state.”

~~“Individual” means a natural person.~~

“Insured” means a person ~~insured~~ covered under the insurance policy against which the claim is made.

“NAIC” means the National Association of Insurance Commissioners.

“National Insurance Producer Registry” or *“NIPR”* means the nonprofit affiliate of the National Association of Insurance Commissioners (NAIC). The NIPR’s website is www.NIPR.com.

“NIPR Gateway” means the communication network developed and operated by the National Insurance Producer Registry that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of, among other things, public adjuster information regarding license applications, license renewals, appointments and terminations. ~~The National Insurance Producer Registry is a nonprofit affiliate of the NAIC. The NIPR’s Web site is www.licenseregistry.com.~~

~~“Person” means an individual or a business entity.~~

“Producer database” means the national database of insurance producers maintained by the NAIC.

“Public adjuster” means ~~any person who, for compensation or any other thing of value, acts on behalf of an insured by doing any of the following:~~ the same as defined in Iowa Code section 522C.2.

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~~1.—Acting for or aiding an insured in negotiating for or in effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.~~

~~2.—Advertising for employment as a public adjuster of first-party claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party claims for loss or damage to real or personal property of an insured.~~

~~3.—Directly or indirectly soliciting the business of investigating or adjusting losses, or of advising an insured about first-party claims for loss or damage to real or personal property of the insured.~~

~~“Uniform business entity application” means the current version of the NAIC’s uniform business entity application for resident and nonresident business entities.~~

~~“Uniform individual application” means the current version of the NAIC’s uniform individual application for resident and nonresident individuals.~~

ITEM 15. Amend rule 191—55.3(82GA, HF499), parenthetical implementation statute, as follows:

191—55.3(82GA, HF499 522C) License required to operate as public adjuster.

ITEM 16. Amend rule 191—55.4(82GA, HF499) as follows:

191—55.4(82GA, HF499 522C) Application for license.

55.4(1) A person applying for a public adjuster license shall make application on a uniform individual application or uniform business entity application available ~~from the division by mail, through the division’s Web site (www.iid.state.ia.us)~~ through the NIPR Gateway, or as otherwise directed by the division.

55.4(2) Each individual resident applying for a public adjuster license shall ~~be required to submit an electronic set of fingerprints with the application, through the division’s testing vendor, which shall be used by the division to determine the eligibility of the applicant for a license~~ submit to a criminal history check pursuant to Iowa Code section 522B.5A.

ITEM 17. Amend rule 191—55.5(82GA, HF499) as follows:

191—55.5(82GA, HF499 522C) Issuance of resident license.

55.5(1) License of individual. ~~A resident individual acting as a public adjuster is required to obtain a resident public adjuster license. Application shall be made using the uniform individual application. Before approving the an individual’s application, the division shall find that the applicant:~~

~~a. Either is eligible to designate this state as the individual’s home state, or is a nonresident who is not eligible for a license under rule 55.8(82GA, HF499) 191—55.8(522C);~~

~~b. Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in rule 55.17(82GA, HF499) 191—55.17(522C);~~

~~c. No change.~~

~~d. Is financially responsible to exercise the license and has provided proof of financial responsibility as required in rule 55.10(82GA, HF499) 191—55.10(522C);~~

~~e. Has paid the fees set forth in rule 55.20(82GA, HF499) 191—55.20(522C);~~

~~f. and g. No change.~~

~~h. Has successfully passed the public adjuster examination pursuant to rule 55.6(82GA, HF499) 191—55.6(522C).~~

55.5(2) License of business entity. ~~A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the uniform business entity application. Before approving the a business entity’s application, the division shall find that the business entity has:~~

~~a. Paid the fees set forth in rule 55.20(82GA, HF499) 191—55.20(522C);~~

~~b. and c. No change.~~

55.5(3) No change.

ITEM 18. Amend rule 191—55.6(82GA, HF499) as follows:

191—55.6(82GA, HF499 522C) Public adjuster examination.

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55.6(1) A resident individual applying for a public adjuster license under this chapter shall pass a written examination, unless exempt pursuant to rule ~~55.7(82GA, HF499)~~ 191—55.7(522C). The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this rule shall be conducted as prescribed by the division.

55.6(2) Each resident individual applying for an examination shall remit a nonrefundable fee as prescribed by the division and set forth in rule ~~55.20(82GA, HF499)~~ 191—55.20(522C).

55.6(3) No change.

55.6(4) The division may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the fee set forth in rule ~~55.20(82GA, HF499)~~ 191—55.20(522C).

ITEM 19. Amend rule 191—55.7(82GA, HF499) as follows:

191—55.7(82GA, HF499 522C) Exemptions from examination.

55.7(1) An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete an examination in this state. However, an individual who moves to this state and who was previously licensed as a public adjuster in another state based on a public adjuster examination shall make application within 90 days of establishing legal residence to become a resident licensed public adjuster pursuant to rule ~~55.5(82GA, HF499)~~ 191—55.5(522C). No examination shall be required of that individual to obtain a public adjuster license. This exemption is available only:

a. and *b.* No change.

55.7(2) No change.

ITEM 20. Amend rule 191—55.8(82GA, HF499) as follows:

191—55.8(82GA, HF499 522C) Nonresident license reciprocity.

55.8(1) Unless denied licensure pursuant to rule ~~55.12(82GA, HF499)~~ 191—55.12(522C), an individual for whom Iowa is not the individual's home state, but whose home state awards nonresident public adjuster licenses to residents of Iowa on the same basis, must satisfy the following requirements to obtain an Iowa nonresident public adjuster license:

a. and *b.* No change.

c. Pay the appropriate fees required, as set forth in rule ~~55.20(82GA, HF499)~~ 191—55.20(522C).

55.8(2) and **55.8(3)** No change.

55.8(4) If an individual's home state does not license public adjusters or does not award nonresident public adjuster licenses to residents of Iowa on the same basis, the nonresident individual shall follow the procedures for obtaining a license set out in rule ~~55.5(82GA, HF499)~~ 191—55.5(522C).

ITEM 21. Amend rule 191—55.9(82GA, HF499) as follows:

191—55.9(82GA, HF499 522C) Terms of licensure. Unless denied licensure under this chapter or under ~~2007 Iowa Acts, House File 499, sections 24 to 29 Iowa Code chapter 522C~~, persons who have met the requirements of this chapter and ~~2007 Iowa Acts, House File 499, sections 24 to 29, Iowa Code chapter 522C~~ shall be issued a public adjuster license.

55.9(1) *Content of license.* ~~Content of license.~~ The license shall contain the public adjuster's name, city and state of business address, license number, the date of issuance, the expiration date, and any other information the division deems necessary. The license number shall be the same as the public adjuster's National Insurance Producer Registry (NIPR) national producer number (NPN). The division will not send a paper license to the public adjuster, but public adjusters may download and print licenses through the division's ~~Web site, www.iid.state.ia.us~~ website.

55.9(2) *Term of license.* ~~Term of license.~~ A public adjuster license shall remain in effect for a term of two years, unless revoked, terminated or suspended, and may be continually renewed as long as the request for renewal is received, the fee set forth in rule ~~55.20(82GA, HF499)~~ 191—55.20(522C) is paid,

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and any other requirements for license renewal are met by the renewal due date. The license term shall be as follows:

a. and b. No change.

55.9(3) Suspension for returned payment. ~~Suspension for returned payment.~~ If the division issues or renews a public adjuster license and subsequently determines that payment by check for the license or renewal was returned to the division by a bank without payment, or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended until the payments are made and any fees or penalties charged by the division are paid, at which time the license may be reinstated. The individual may request a hearing within 30 days of receipt of notice by the division that the license was suspended.

55.9(4) Change in name, address or state of residence. ~~Change in name, address or state of residence.~~

a. Name change. If a licensed public adjuster's name is changed, the licensed public adjuster must file notification with the division within 30 days of the name change. ~~Notification may be filed through the NIPR Gateway, if available, or as instructed on the division's website.~~ The notification must include the licensed public adjuster's:

- (1) ~~Former~~ The licensed public adjuster's former name;
- (2) ~~License~~ The licensed public adjuster's license number; and
- (3) ~~New~~ The licensed public adjuster's new name; and
- (4) A copy of a legal document with proof of the name change.

b. and c. No change.

55.9(5) Reporting of actions. ~~Reporting of actions.~~

a. to c. No change.

55.9(6) Failure to notify. Failure to notify the division or to file reports required by this rule is a violation of this chapter and will subject licensed public adjusters to penalty pursuant to ~~subrule 55.19(82GA, HF499)~~ rule 191—55.19(522C).

55.9(7) Renewal of license. ~~Renewal of license.~~

a. to c. No change.

d. A resident public adjuster may reinstate an expired license up to 12 months after the license expiration date ~~by submitting a request to the division and by~~ proving that during the applicable continuing education term, the public adjuster met the continuing education requirements found in rule 191—55.11(522C) and by paying a reinstatement fee and license renewal fees, as set forth in rule 55.20(82GA, HF499) 191—55.20(522C). A resident public adjuster who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

e. A nonresident public adjuster may reinstate an expired license up to 12 months after the license expiration date by submitting a request to the division through the NIPR Gateway and by paying a reinstatement fee and license renewal fee. A nonresident public adjuster who fails to apply for license reinstatement within 12 months of the license expiration date or fails to update the nonresident public adjuster's address pursuant to subrule 55.9(4) must apply for a new license.

f. No change.

55.9(8) Division functions. ~~Division functions.~~

a. and b. No change.

ITEM 22. Amend rule 191—55.10(82GA, HF499), parenthetical implementation statute, as follows:

191—55.10(82GA, HF499) 522C) Evidence of financial responsibility.

ITEM 23. Amend rule 191—55.11(82GA, HF499), parenthetical implementation statute, as follows:

191—55.11(82GA, HF499) 522C) Continuing education.

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ITEM 24. Amend rule 191—55.12(82GA, HF499) as follows:

191—55.12(82GA, HF499 522C) License denial, nonrenewal or revocation.

55.12(1) The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license; ~~or~~ may levy a civil penalty in accordance with Iowa Code section 505.7A; or ~~may~~ take corrective action pursuant to Iowa Code section 505.8 ~~as amended by 2007 Iowa Acts, House File 499, section 6,~~ or any combination of actions, for any one or more of the following causes:

- a. No change.
- b. Failing to complete continuing education as required by rule ~~55.11(82GA, HF499) 191—55.11(522C)~~;
- c. to k. No change.
- l. Failing to comply with an administrative or court order imposing a child support obligation, following procedures of ~~rules 191—10.20(522B) and 191—10.21(522B)~~ rule 191—10.21(252J, 272D), replacing the ~~words~~ word “producer” with “public adjuster”;
- m. Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax, following procedures of rule 191—10.21(252J, 272D), replacing the word “producer” with “public adjuster”;
- n. No change.
- o. Failing to maintain evidence of financial responsibility as required by rule ~~55.10(82GA, HF499) 191—55.10(522C)~~;
- p. No change.
- q. Failing to report to the division any notifications or actions required to be reported pursuant to rule ~~55.9(82GA, HF499) 191—55.9(522C)~~; or
- r. No change.

55.12(2) and 55.12(3) No change.

55.12(4) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine pursuant to Iowa Code section 505.7A, or to other corrective action pursuant to Iowa Code section 505.8 ~~as amended by 2007 Iowa Acts, House File 499, section 6.~~

55.12(5) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and Iowa Code chapters 505 and 522C against any person who is under investigation for or charged with a violation of this chapter and ~~2007 Iowa Acts, House File 499, sections 24 to 29~~ Iowa Code chapter 522C, even if the person's license has been surrendered or has lapsed by operation of law.

ITEM 25. Amend rule 191—55.13(82GA, HF499) as follows:

191—55.13(82GA, HF499 522C) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

55.13(1) Definitions and scope. ~~Definitions and scope.~~

- a. No change.
- b. The term “reissuance” as used in this rule means the issuance of a new license following either the revocation of a license, the suspension and subsequent termination of a license, or the forfeiture of a license in connection with a disciplinary matter.
- c. This rule does not apply to the reinstatement of an expired license that is not in connection with a disciplinary matter.

55.13(2) Application required. Any person licensed in Iowa as a public adjuster whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

- a. All proceedings for reinstatement or reissuance shall be initiated by the applicant who shall file with the commissioner an application for reinstatement or reissuance of a license. As part of

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the application, the applicant shall submit to a criminal history check pursuant to Iowa Code section 522B.5A.

b. to d. No change.

55.13(3) *Proceedings.* All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

55.13(4) *Order.* An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems desirable, which may include one or more of the types of disciplinary sanctions provided by this chapter and ~~2007 Iowa Acts, House File 499, sections 24 to 29~~ Iowa Code chapter 522C. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapters 22 and 505.

55.13(5) *Suspension in relation to expiration date.* When a public adjuster's license has been suspended for a period of time which extends beyond the public adjuster's license expiration date, the license will terminate at the license expiration date, and the public adjuster must request reinstatement pursuant to subrule 55.10(2). If suspension for a period of time ends prior to the public adjuster's license expiration date and the public adjuster has met all applicable requirements, the division shall reinstate the license at as soon as practicable but no earlier than the end of the suspension period. The commissioner is not prohibited from denying reinstatement or bringing an additional immediate action if the public adjuster has engaged in misconduct during the period of suspension.

55.13(6) *Voluntary forfeiture.* A ~~request for~~ request for submission of voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission ~~of the request~~ unless a contested case proceeding is pending at the time ~~the request is submitted~~ of submission. If a contested case proceeding is pending ~~at the time of the request~~, the forfeiture shall become effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

55.13(7) *Forfeiture in lieu of compliance.* A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner or the commissioner's designee with the written consent of the commissioner. The forfeiture shall become effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by this chapter and ~~2007 Iowa Acts, House File 499, sections 24 to 29~~ Iowa Code chapter 522C.

ITEM 26. Amend rule 191—55.14(82GA, HF499), parenthetical implementation statute, as follows:

191—55.14(~~82GA, HF499~~ 522C) Contract between public adjuster and insured.

ITEM 27. Amend rule 191—55.15(82GA, HF499), parenthetical implementation statute, as follows:

191—55.15(~~82GA, HF499~~ 522C) Escrow accounts.

ITEM 28. Amend rule 191—55.16(82GA, HF499), parenthetical implementation statute, as follows:

191—55.16(~~82GA, HF499~~ 522C) Record retention.

ITEM 29. Amend rule 191—55.17(82GA, HF499), parenthetical implementation statute, as follows:

191—55.17(~~82GA, HF499~~ 522C) Standards of conduct of public adjuster.

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ITEM 30. Amend subrule 55.17(3) as follows:

55.17(3) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this chapter or ~~2007 Iowa Acts, House File 499, sections 24 to 29~~ Iowa Code chapter 522C.

ITEM 31. Amend rule 191—55.18(82GA, HF499), parenthetical implementation statute, as follows:

191—55.18(82GA, HF499 522C) Public adjuster fees.

ITEM 32. Amend rule 191—55.19(82GA, HF499) as follows:

191—55.19(82GA, HF499 522C) Penalties. Failure to comply with this chapter or with ~~2007 Iowa Acts, House File 499, sections 24 to 29,~~ Iowa Code chapter 522C shall subject a person to penalties set forth in ~~2007 Iowa Acts, House File 499, section 29~~ Iowa Code section 522C.6.

ITEM 33. Amend rule 191—55.20(82GA, HF499), parenthetical implementation statute, as follows:

191—55.20(82GA, HF499 522C) Fees.

ITEM 34. Rescind subrule 55.20(2) and adopt the following **new** subrule in lieu thereof:

55.20(2) The fee for a criminal history check as required pursuant to Iowa Code section 522B.5A is \$50.

ITEM 35. Amend rule 191—55.21(82GA, HF499), parenthetical implementation statute, as follows:

191—55.21(82GA, HF499 522C) Severability.

ITEM 36. Amend **191—Chapter 55**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, House File 499, sections 24 to 29~~ Iowa Code chapter 522C.

ITEM 37. Amend **191—Chapter 55**, Appendix I, paragraph (6), as follows:

(6) An insured may contact the Iowa Insurance Division with questions about insurance law toll-free from within Iowa at (877)955-1212 or through the Division's ~~Web site at www.iid.state.ia.us~~ website at iid.iowa.gov.

ITEM 38. Amend rule 191—58.2(510) as follows:

191—58.2(510) Definitions. The terms defined in Iowa Code section 510.11 and rule 191—1.1(502,505) shall have the same meaning for the purposes of this chapter. In addition, for purposes of this chapter:

"Affiliate" or *"affiliates"* means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person. For purposes of this definition, "control" (including the terms "controls" or "controlled by") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Iowa Code section 505.23 and Iowa Code chapter 521A that control does not exist in fact. The commissioner may determine, after furnishing notice and opportunity to be heard to all persons in interest and after making specific findings of fact to support the determination, that control exists in fact notwithstanding the absence of a presumption to that effect.

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~~“Commissioner” means the commissioner of insurance for the state of Iowa.~~

~~“Division” means the Iowa insurance division.~~

~~“Home state” means the United States state or territory or the District of Columbia designated by a third-party administrator as its principal regulator, which shall be either its place of incorporation or its principal place of business within the United States. A third-party administrator may designate as its home state any United States jurisdiction in which it does business and which has adopted a law governing third-party administrators substantially similar to Iowa Code chapter 510 and this chapter.~~

~~“Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance the same as defined in Iowa Code section 522B.1.~~

~~“Insurer” means a person engaged in the business of insurance who is regulated under Iowa Code chapter 508, 512B, 514, 514B, 515, or 520.~~

~~“Nonresident third-party administrator” means a person who is applying for licensure in Iowa, who is licensed in any state other than Iowa, and whose home state is not Iowa.~~

~~“Person” means any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.~~

~~“Stop-loss” or “stop-loss insurance” means insurance protecting an employer or other person responsible for an otherwise self-insured health or life benefit plan against higher than expected obligations under the plan.~~

~~“Underwrites” or “underwriting” or “underwritten” means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan, or the overall planning and coordinating of a benefits program.~~

ITEM 39. Amend paragraphs **58.3(1)“e”** and **“f”** as follows:

e. A person who is not required to be registered as a third-party administrator under Iowa Code chapter 510 or this chapter and who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, only in connection with life, annuity or health coverage provided by a self-funded plan other than a governmental or church plan, shall file a statement with the commissioner triennially, verifying the person’s status as described herein. An example of such a statement may be found on the division’s ~~Web site, www.iid.state.ia.us~~ website.

f. An administrator operating solely as a single-employer trust or Taft-Hartley labor union trust as defined under ERISA shall be required to file a statement triennially, verifying the administrator’s status as described herein. An example of such a statement may be found on the division’s ~~Web site, www.iid.state.ia.us~~ website.

ITEM 40. Amend rule 191—58.5(510) as follows:

191—58.5(510) Renewal procedure. A third-party administrator that wants to maintain its certificate of registration in Iowa shall file a completed request for renewal ~~no later than~~ within 60 days before prior to the expiration date on the certificate of registration.

58.5(1) and **58.5(2)** No change.

58.5(3) Renewal requests filed after the ~~60-day period specified~~ certificate expiration date must include the late fee specified in rule 191—58.18(510).

58.5(4) No change.

[Filed 10/6/20, effective 12/9/20]

[Published 11/4/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5251C**MEDICINE BOARD[653]****Adopted and Filed****Rule making related to the Iowa physician health committee
and the Iowa physician health program**

The Board of Medicine hereby amends Chapter 14, "Iowa Physician Health Committee," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 272C.3.

Purpose and Summary

As part of its regular review of administrative rules, the Iowa Physician Health Program (IPHP) staff is amending Chapter 14 to streamline, clean up, and clarify the rules governing the program and Iowa Physician Health Committee (IPHC).

Among other things, these amendments:

- Add the following defined terms: "IPHP," "applicant," "licensee," and "mental disorder."
- Update the definition of "impairment" to align with the definition used by the Federation of State Medical Boards and Federation of State Physician Health Programs.
- Specify that the Board's Medical Director or Executive Director may serve as a member of the IPHC.
- Specify that the Board's Medical Director or Co-Chairperson can provide guidance to staff in between meetings.
- Clarify that the length of a contract with the IPHP may range from one to five years depending on the individual licensee's circumstances.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5132C**. No public comments were received. One change from the Notice was made in Item 2 to change the word "their" to "the licensee's."

Adoption of Rule Making

This rule making was adopted by the Board on September 24, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

MEDICINE BOARD[653](cont'd)

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend **653—Chapter 14**, title, as follows:

IOWA PHYSICIAN HEALTH COMMITTEE—IOWA PHYSICIAN HEALTH PROGRAM

ITEM 2. Amend rules 653—14.1(272C) to 653—14.6(272C) as follows:

653—14.1(272C) Iowa physician health committee—Iowa physician health program.

14.1(1) Iowa physician health committee. Pursuant to the authority of Iowa Code section 272C.3(1) “k,” the board establishes the Iowa physician health committee, ~~formerly known as the impaired physician review committee.~~

14.1(2) Iowa physician health program. To assist in executing its duties under Iowa Code section 272C.3(1) “k,” the committee establishes the Iowa physician health program. The program shall operate under the direction of the committee and shall be supervised by the executive director of the board.

653—14.2(272C) Definitions.

“Applicant” means any person who has submitted an application to the board for a license to practice medicine, acupuncture, or genetic counseling.

“Board” means the board of medicine of the state of Iowa.

“Health contract” or “contract” means the written document executed by an applicant or licensee and the IPHC which establishes the terms for participation in the Iowa physician health program.

“Impairment” means an inability, or significant potential for inability, to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any mental or physical disorder or disability. For the purposes of this program, “impairment” does not include sexual dysfunction, sexual addiction, sexual compulsivity, paraphilia, or other sexual disorder. any of the following that renders or, if left untreated, is reasonably likely to render a licensee unable to practice the licensee’s profession with reasonable skill and safety:

1. Mental disorder;

2. Physical illness or condition, including but not limited to those illnesses or conditions that would adversely affect cognitive, motor, or perceptive skills; or

3. Substance-related disorder, including abuse of or dependence on drugs or alcohol.

“Initial Agreement agreement” means the written document establishing the initial terms for participation in the Iowa physician health program.

“IPHC” or “committee” means the Iowa physician health committee.

“IPHP” or “program” means the Iowa physician health program.

“Licensee” means any person who has an Iowa license to practice medicine, acupuncture, or genetic counseling issued by the board.

“Mental disorder” means any disorder, condition, illness, or syndrome characterized by a clinically significant disturbance in an individual’s cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities.

MEDICINE BOARD[653](cont'd)

~~“Participant” means an applicant or licensee who does any of the following: self-reports an impairment to the Iowa physician health program, is referred to the Iowa physician health program by the board pursuant to 653—14.11(272C); signs an initial agreement with the Iowa physician health committee; or signs a contract with the Iowa physician health committee.~~

“Prospective participant” means a licensee or applicant who self-reports an impairment to the Iowa physician health program or is referred to the Iowa physician health program by the board pursuant to 653—14.11(272C).

“Referral by the board” means the board has determined, with or without having taken disciplinary action, that the applicant or licensee is an appropriate candidate for participation in the IPHP pursuant to 653—14.11(272C).

“Self-report” means an applicant’s or a licensee’s providing written notification to the IPHC that the applicant or the licensee has been, is, or may be impaired. Information related to an impairment or a potential impairment which is provided on a license application or renewal form may be considered a self-report upon the request of the applicant or licensee and authorization from the board and agreement by the IPHC.

653—14.3(272C) Purpose. ~~The IPHC assists and monitors and IPHP assist and monitor the recovery, rehabilitation, or maintenance of licensees who self-report impairments or are referred by the board pursuant to 653—14.11(272C) and, as necessary, notifies notify the board in the event of noncompliance with contract provisions. The IPHC is and IPHP both an advocate for licensees’ health and a means to protect promote and protect the health and safety of the public.~~

653—14.4(272C) Organization of the committee. The board shall appoint the members of the IPHC.

14.4(1) Membership. The membership of the IPHC includes, but is not limited to:

~~a. The executive medical director of the board or the director’s designee from the board’s staff executive director of the board;~~

~~b. to e. No change.~~

14.4(2) Officers. ~~The IPHC shall elect a chairperson and a co-chairperson or a vice chairperson~~ two co-chairpersons at the last meeting of each calendar year to begin serving a one-year term on January 1.

~~a. The chairperson and A co-chairperson are is responsible for presiding over IPHC meetings.~~

~~b. The medical director and co-chairpersons are responsible for offering guidance and direction to staff between regularly scheduled committee meetings, including negotiation and execution of initial agreements, contracts, and program descriptions and interim restrictions on practice on behalf of the committee. The IPHC retains authority to review all interim decisions at its discretion.~~

~~b. c. The vice chairperson A co-chairperson is responsible for providing guidance and direction to staff between regularly scheduled committee meetings if the chairperson medical director is unavailable or unable to assist in a particular matter.~~

14.4(3) Terms. Committee members, except the ~~executive director~~ medical director, shall be appointed for three-year terms, for a maximum of three terms. Terms shall expire on December 31 of the third year of the term.

653—14.5(272C) Eligibility. To be eligible for participation in the IPHP, an applicant or a licensee must self-report an impairment or potential impairment directly to the IPHP or be referred by the board for an impairment or potential impairment pursuant to 653—14.11(272C) and be determined by the IPHC to be an appropriate candidate for participation in the IPHP.

14.5(1) No change.

14.5(2) ~~A participant~~ prospective participant may be determined to be ineligible to participate in the program as a self-reporter or a referral from the board if the committee finds sufficient evidence of any of the following:

~~a. The participant~~ prospective participant provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the IPHC.

~~b. The participant~~ prospective participant fails to sign a contract when recommended by the IPHC.

MEDICINE BOARD[653](cont'd)

c. The IPHC determines it will be unable to assist the ~~participant~~ prospective participant.

14.5(3) No change.

653—14.6(272C) Type of program. The IPHP is an individualized recovery, rehabilitation, or maintenance program designed to meet the specific needs of the participant. The committee, in consultation with ~~an IPHC-approved evaluator~~ committee-approved evaluators and treatment providers, shall determine the type of recovery, rehabilitation, or maintenance program required to treat the participant's impairment based on the diagnosis and treatment recommendations from the evaluator or treatment provider. The IPHC shall prepare a contract, to be signed by the participant, that shall provide a detailed description of the goals of the program, the requirements for successful participation, and the participant's obligations therein. The IPHC may delegate its obligations and duties under these rules to the IPHP staff and the medical director as appropriate pursuant to policies and procedures adopted by the IPHC.

ITEM 3. Amend subrule 14.7(1) as follows:

14.7(1) Duration. ~~The length of time a participant may participate in the program shall be determined by the IPHC in accordance with the following:~~ Length of participation in the program can vary from one to five years depending on the individual participant's diagnosis, recommendations from approved evaluators and treatment providers, and the IPHC following a review of all relevant information. A contract shall only terminate once the IPHC has determined that the licensee is no longer impaired.

~~a.—Participation in the program for participants impaired as a result of alcohol or drug dependency or addiction is set at a minimum of five years. The IPHC may offer a contract with a shorter duration to a participant who can demonstrate successful participation in another state's physician health program, who can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.~~

~~b.—Length of participation in the program for participants with impairments resulting from mental or physical disorders or disabilities will vary depending upon the recommendations provided by an approved evaluator and the determination of the IPHC following review of all relevant information.~~

ITEM 4. Amend rule 653—14.11(272C) as follows:

653—14.11(272C) Board referrals to the Iowa physician health program.

14.11(1) Eligibility for board referral to IPHP. The board may refer to the IPHP a licensee or applicant for whom the following circumstances apply:

a. No change.

b. The board determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

~~NOTE: A licensee who is the subject of a formal board disciplinary order relating to an impairment must demonstrate a sufficient period of compliance with the disciplinary order before referral to the IPHP.~~

c. No change.

14.11(2) Referral process.

a. to d. No change.

~~e.—Upon notification that the contract has been finalized for a participant who is the subject of a formal board disciplinary order relating to the impairment, the board shall file an order referring the licensee to the IPHP, and that order shall be a public record.~~

~~f. e.~~ f. e. The IPHC shall notify the board upon the participant's successful completion of the program. The board may file an order recognizing the participant's successful completion of the program in cases where the referral was included in a public record. An order recognizing completion of the program shall be a public record.

~~g. f.~~ g. f. Referral of an applicant or licensee by the board to the IPHP shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. Upon referral, the applicant or licensee shall be subject to the provisions of 653—Chapter 14.

MEDICINE BOARD[653](cont'd)

Specifically, the applicant or licensee shall be subject to board review and potential formal disciplinary action pursuant to subrule 14.7(2) for noncompliance with the provisions of the IPHP health contract.

~~14.11(3) Investigation and disciplinary action on referrals. Rescinded IAB 6/30/10, effective 8/4/10.~~

ITEM 5. Amend **653—Chapter 14**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 272C.3 as amended by 2003 Iowa Acts, House File 641, section 6.

[Filed 10/13/20, effective 12/9/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5252C

MEDICINE BOARD[653]

Adopted and Filed

Rule making related to physician supervision of physician assistants

The Board of Medicine hereby amends Chapter 21, "Physician Supervision of a Physician Assistant," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272C.3 and 2020 Iowa Acts, Senate File 2357.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2357.

Purpose and Summary

In 2020, the Iowa General Assembly passed Senate File 2357, which makes several changes to the regulation of physician assistants in Iowa. Specifically, these amendments address changes to the obligations of supervising physicians and supervisory agreements with physician assistants.

These amendments also clarify that a supervising physician shall not supervise more than five physician assistants pursuant to Iowa Code section 148C.3(2) as an eligibility criterion for being a supervising physician.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5133C**. No public comments were received. The only change from the Notice is the removal of the language "or variance" in subparagraph 21.4(2)"b"(2), consistent with 2020 Iowa Acts, House File 2389.

Adoption of Rule Making

This rule making was adopted by the Board on September 24, 2020.

Fiscal Impact

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

MEDICINE BOARD[653](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 653—21.1(148,272C) as follows:

653—21.1(148,272C) Ineligibility 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:

21.1(1) The physician does not hold an active, permanent, special or temporary Iowa medical license.

21.1(2) The physician is subject to a disciplinary order of the board that restricts or rescinds the physician's authority to supervise a physician assistant. The physician may supervise a physician assistant to the extent that the order allows.

21.1(3) The physician does not have a written supervisory agreement in place with each physician assistant supervised by the physician.

21.1(4) The physician is already supervising five physician assistants.

ITEM 2. Amend rule 653—21.4(148,272C) as follows:

653—21.4(148,272C) Supervisory agreements.

21.4(1) Each A physician who supervises a physician assistant shall establish a written supervisory agreement prior to supervising a physician assistant. 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 shall 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 shall maintain a copy of the supervisory agreement and provide a copy of the agreement to the board upon request. The supervisory agreement shall, at a minimum, address the following provisions.

21.4(1) a. *Review of requirements.* ~~The supervisory agreement shall include a provision which ensures that the supervising physician and the physician assistant shall review all of the requirements of physician assistant licensure, practice, supervision, and delegation of medical services as set forth in Iowa Code section 148.13 and chapter 148C, this chapter these rules, and 645—Chapters 326 to 329.~~

MEDICINE BOARD[653](cont'd)

~~21.4(2) b.~~ *Assessment of education, training, skills, and experience.* ~~The supervisory agreement shall include a provision which ensures that each~~ Each supervising physician assesses shall assess the education, training, skills, and relevant experience of the physician assistant prior to providing supervision. Each supervising physician and physician assistant shall 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. ~~Thereafter, each supervising physician shall regularly evaluate the clinical judgment, skills, performance and patient care of the physician assistant and shall provide appropriate feedback to the physician assistant.~~ The method for assessing and providing feedback regarding the physician assistant's education, training, skills, and experience shall be reflected in the supervisory agreement.

~~21.4(3) 21.4(2)~~ *Delegated services.* ~~The supervisory agreement shall include a provision which addresses the services the supervising physician delegates to the physician assistant.~~ between the physician assistant and the physician shall 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 shall be in compliance with 645—subrule 327.1(1). All delegated medical services shall be within the scope of practice of the supervising physician and the physician assistant. The supervising physician and the physician assistant shall have the education, training, skills, and relevant experience necessary to perform the delegated services prior to delegation.~~

21.4(4) Communication. ~~The supervisory agreement shall include a provision which sets forth expectations for communication. Each supervising physician and physician assistant shall communicate about and consult on patient complaints, medical problems, complications, emergencies, and patient referrals as indicated by the clinical condition of the patient. The supervising physician shall be available for timely consultation with the physician assistant, either in person or by telephonic or other electronic means. The supervisory agreement shall also include a provision which ensures that each supervising physician and physician assistant~~

b. Methods for communication between the physician assistant and the physician and whether the physician assistant practices at the same site or a remote site. Each supervising physician and physician assistant shall 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.

21.4(5) Chart review. ~~The supervisory agreement shall include a provision which sets forth the plan for completing and documenting chart reviews. Documentation may include, but is not limited to, the supervising physician's placing the supervising physician's signature or initials on the charts reviewed. Each supervising physician shall ensure that~~

(1) The plan for completing and documenting chart reviews. A licensed physician within the same facility or health care system as the physician assistant shall conduct an ongoing review of a representative sample of the physician assistant's patient charts encompassing the scope of the physician assistant's practice provided under the physician's supervision occurs and that the findings of the review are discussed with the physician assistant. The finding of the review shall be discussed with the physician assistant in a manner determined by the practice in consultation with the physician assistant's primary supervising physician.

21.4(6) (2) Remote medical site. Remote medical site. "Remote medical site" means a medical clinic for ambulatory patients which is more than 30 miles away from the main practice location of the supervising physician and in which the supervising physician is present less than 50 percent of the time when the remote medical site is open. "Remote medical site" will not apply to nursing homes, patient homes, hospital outpatient departments, outreach clinics, or any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility). The supervisory agreement shall include a provision which ensures that the supervising physician visits the remote medical site, or communicates with a physician assistant at the remote medical site via electronic communications, at least every two weeks to provide additional medical direction, medical services and

MEDICINE BOARD[653](cont'd)

consultation specific to the medical services provided at the remote medical site. For purposes of this ~~subrule subparagraph~~, communication may consist of, but shall not be limited to, in-person meetings or two-way, interactive communication directly between the supervising physician and the physician assistant via the telephone, secure messaging, electronic mail, or chart review. ~~The supervisory agreement shall also include a provision which ensures that at least one supervising physician meets in person, and documents the meeting, with the physician assistant at the remote medical site at least once every six months to evaluate and discuss the medical facilities, resources, and medical services provided at the remote medical site. The board shall only grant a waiver or variance of this provision if substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in this rule subparagraph.~~

~~21.4(7) (3) *Alternate supervision.* The expectations and plan for alternate supervision. The supervisory agreement shall include a provision which sets forth the expectations and plan for alternate supervision. If the supervising physician will not be available for any reason, an alternate supervising physician must be available to ensure continuity of supervision. The supervising physician will ensure that the 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. The physician assistant may not practice if supervision is unavailable, except as otherwise provided in Iowa Code chapter 148C or 645— Chapters 326 to 329.~~

[Filed 10/13/20, effective 12/9/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5268C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to continuing education hours

The Board of Speech Pathology and Audiology hereby amends Chapter 303, "Continuing Education for Speech Pathologists and Audiologists," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272C.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 272C.2.

Purpose and Summary

This rule making amends the Board's continuing education rules to remove the 16-hour cap on remote continuing education hours. Under the new requirement, licensees may complete all hours through remote offerings, provided the remote activity or course includes a posttest.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 9, 2020, as **ARC 5163C**. A public hearing was held on September 29, 2020, at 9 a.m. in Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa.

The Iowa Speech-Language-Hearing Association (ISHA) and the American Speech-Language-Hearing Association (ASHA) support the removal of the 16-hour cap on remote continuing education hours. ISHA and ASHA share concerns about the requirement for a posttest,

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

and each suggested edits to the requirement to increase flexibility of delivery of various continuing education programs. In addition to providing written and verbal comments, ASHA and ISHA presented their concerns about the requirement for a posttest during the Board meeting on October 16, 2020. Suggested amendments were not incorporated, and the posttest requirement remains. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on October 16, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making action is adopted:

Amend paragraph **303.3(2)“f”** as follows:

f. ~~A maximum of 16 hours of continuing~~ Continuing education credit may be earned ~~per biennium~~ 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.

[Filed 10/16/20, effective 12/9/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5253C**PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed****Rule making related to Governor's traffic safety bureau**

The Public Safety Department hereby amends Chapter 20, "Governor's Traffic Safety Bureau," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Executive Order 23, signed June 9, 1986, and 23 U.S.C. 402.

State or Federal Law Implemented

This rule making implements, in whole or in part, Executive Order 23, signed June 9, 1986, and 23 U.S.C. 402.

Purpose and Summary

These amendments update the process by which applications for funding are submitted and reviewed. Specifically, the exhaustive criteria that were previously listed have been removed and more deference is given to the guidance from the federal government. Additionally, updates have been made throughout to remove references to specific years or versions of documents. This allows the rules to remain unaffected with every change to the federal statute or internal Governor's Traffic Safety Bureau documents.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 15, 2020, as **ARC 5084C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on October 14, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

PUBLIC SAFETY DEPARTMENT[661](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 661—20.2(23USC402,ExecOrd23) as follows:

661—20.2(23USC402,ExecOrd23) Purpose. The purpose of the highway safety program is to provide a coordinated federal, state and local effort to reduce traffic-related deaths, injuries, and property damage crashes.

The following eight highway safety priority areas have been established by the federal government to provide a guide to program involvement and reimbursement: alcohol; police traffic services; emergency medical services; traffic records; occupant restraints; engineering; motorcycles; and pedestrians/bicycles.

NOTE: The federal government may add additional priority areas as traffic trends change.

ITEM 2. Amend subrule 20.3(6) as follows:

20.3(6) Application for funding.

a. Proposals for funding highway safety programs may be submitted at any time during set application time periods by any city, county, or state agency, or nonprofit organization or any other eligible organization or individual.

b. ~~Applications must be received on or before March 1 to be considered for funding in the next federal fiscal year, beginning October 1, must be received on or before March 1 to be considered.~~ Applications for contracts beginning November 1 must be received on or before May 1. The bureau chief of the governor's traffic safety bureau may amend the deadline dates in order to implement projects and special activities as deemed appropriate.

c. Initial proposals should include project title, statement of the highway safety problem to be addressed supported by ~~three years of~~ crash data, what is being proposed to solve the problem, how it will be evaluated, a proposed budget, and a letter of intent accepting responsibility for the proposed project from the responsible authority of the organization making application.

d. Only written requests containing the listed elements will be considered for funding.

e. Assistance in developing and submitting proposals for highway safety funding may be obtained by contacting the ~~Director, Governor's Traffic Safety Bureau, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail via the Internet~~ governor's traffic safety bureau, Iowa department of public safety, by email at gtsbinfo@safe.ia.gov.

~~EXCEPTION: Applications for funding of programs pursuant to the authority of 23 U.S.C. 153 must be received by the governor's traffic safety bureau on or before June 1 to be considered for the following federal fiscal year.~~

ITEM 3. Amend subrule 20.4(1) as follows:

20.4(1) Allocation of federally appropriated funds administered by the governor's traffic safety bureau pursuant to Title 23 U.S.C. ~~as amended through September 1, 1993, Section 402,~~ shall be based on: (1) federally mandated projects; and (2) high fatality and personal injury crash causations and locations.

~~The following criteria will be used to rank Iowa's counties according to the severity of their highway safety problems:~~

~~*a.* Fatal crashes by county.~~

~~*b.* Personal injury crashes by county.~~

~~*c.* Serious personal injury crashes by county.~~

~~*d.* Alcohol-related fatal crashes by county.~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~e.—Alcohol-related personal injury crashes by county.~~

~~f.—Vehicle miles of travel by county.~~

~~g.—Serious traffic offenses by county.~~

~~h.—Fatal and injury crashes involving motorcycles by county.~~

~~i.—Fatal and injury crashes involving pedestrians and bicycles by county.~~

~~Eligibility of counties, and cities within those counties, for the limited federal funds available will be determined according to county rankings on the nine listed criteria.~~

NOTE: The governor's traffic safety bureau shall refer to current federal authorization to dictate how funds are distributed.

ITEM 4. Amend rule 661—20.5(23USC402,ExecOrd23) as follows:

661—20.5(23USC402,ExecOrd23) Program requirements.

20.5(1) All approved programs funded by the governor's traffic safety bureau must be administered in compliance with the current version of the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual, 1993.

20.5(2) Highway safety contract procedures and reporting forms and their explanations are contained in the current version of the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual, 1993.

20.5(3) Single copies of the current version of the Iowa Governor's Traffic Safety Bureau Policies and Procedures Manual may be obtained on request from the ~~Director~~, Governor's Traffic Safety Bureau, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

ITEM 5. Amend **661—Chapter 20**, implementation sentence, as follows:

These rules are intended to implement Title 23 U.S.C., Section 402, ~~as amended through September 1, 1993~~, and Governor's Executive Order Number Twenty-Three, signed June 9, 1986.

[Filed 10/14/20, effective 12/9/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5254C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to smoke alarms and detectors

The State Fire Marshal hereby amends Chapter 210, "Smoke Detectors," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 100.18.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 100.18.

Purpose and Summary

These amendments bring the regulations into compliance with nationally recognized fire codes and the recognition of new technologies.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 15, 2020, as **ARC 5083C**. Kidde Fire Safety, a smoke detector company, voiced support for the rule making. Christopher Rants of PolicyWorks expressed appreciation for the proposed amendments and the Department's work on the rules. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Fire Marshal on October 13, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making action is adopted:

Amend **661—Chapter 210** as follows:

CHAPTER 210
SMOKE ~~DETECTORS~~ ALARMS/DETECTORS

661—210.1(100) Definitions. The following definitions apply to rules 661—210.1(100) through 661—210.5(100):

“*Approved*” means that the equipment has been approved or listed for a specific use by an independent testing laboratory or organization of national reputation.

“*Commercial grade smoke detection system*” means a system of smoke detectors in which each detector is listed to Underwriters Laboratory Standard 268, Smoke Detectors for Fire Alarm Systems, or to another standard approved by the state fire marshal. Sensors in a commercial grade smoke detection system shall be located so as to provide coverage at least equivalent to that which would be provided by smoke detectors installed as required in subrule 210.3(11).

“*Dual sensor smoke detector*” means a smoke detector which contains both an ionization sensor and a photoelectric sensor and which is designed to detect and trigger an alarm in response to smoke

PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~detected through either sensing device, or a smoke detector which has at least two sensors and which is listed to Underwriters Laboratory Standard 217, Single and Multiple Station Smoke Alarms, or to another standard approved by the state fire marshal.~~

“Fire alarm system” means a system or a portion of a combination system consisting of components and circuits arranged to monitor and annunciate the status of fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals.

“Multiple-station smoke alarm” means two or more single-station smoke alarm devices that are capable of interconnection such that actuation of one causes the appropriate alarm signal to operate in all interconnected alarms. Interconnection may occur wirelessly for residential smoke alarms.

“Single-station smoke alarm” means an assembly incorporating the detector, the control equipment and the alarm-sounding device in one unit, operated from a power supply either in the unit or obtained at the point of installation or both.

“Smoke alarm” means a single- or multiple-station alarm responsive to smoke. See also “single-station smoke alarm” and “multiple-station smoke alarm.” Residential smoke alarms are required to be listed under Underwriters Laboratory Standard (UL) 217.

“Smoke detector” means a device that senses visible or invisible particles of combustion. Smoke detectors are typically listed under UL 268.

661—210.2(100) Scope. The provisions of this chapter apply to single-family and two-family residences, ~~and~~ to townhouses and to all other residential occupancies in commercial buildings unless otherwise provided herein or by another provision of law. The provisions of this chapter do not apply to nonresidential occupancies.

661—210.3(100) General requirements.

210.3(1) ~~Approved single-station smoke alarms shall be acceptable in all areas covered by this chapter, unless other fire warning equipment or materials are required by any provision of 661—Chapter 201, 202, or 205 or if a commercial grade smoke detection system~~ fire alarm system with smoke detection listed under UL 268 has been installed. Any single-station smoke alarm or multiple-station smoke alarm installed on or after April 1, 2010, in compliance with this subrule, including a replacement of an existing smoke alarm, shall be a dual-sensor smoke alarm listed under UL 217. If sufficient dual sensor smoke alarms have been installed to comply with the requirements of this chapter, additional smoke alarms which may be other than dual sensor alarms may be installed.

210.3(2) ~~Any installation of wiring and equipment shall comply with NFPA 70, National Electrical Code, 2014 edition, and requirements established by the manufacturer of the equipment serviced by the wiring 661—Chapter 504.~~

210.3(3) ~~All devices, combinations of devices, and equipment to be installed in conformity with this chapter shall be approved and used for the purposes for which they are intended. Any smoke alarm installed on or after April 1, 2010, in compliance with this chapter, including a replacement of an existing smoke alarm, shall be a dual-sensor smoke alarm listed in accordance with UL 217. Existing dual sensor smoke alarms may be maintained until replacement is recommended by the manufacturer or upon failure. If sufficient dual sensor smoke alarms have been installed to comply with the requirements of this chapter, additional smoke alarms which may be other than dual sensor alarms may be installed.~~

210.3(4) to 210.3(6) No change.

210.3(7) Power source.

a. ~~In new buildings and additions constructed after July 1, 1991, required smoke detectors alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than that required for overcurrent protection. Smoke detectors alarms may be solely battery-operated battery-powered when installed in existing buildings, or in buildings without commercial power, or in buildings which undergo alterations, repairs or additions subject to subrule 210.3(2).~~

b. ~~New and replacement smoke detectors alarms installed after May 1, 1993, which receive their primary power from the building wiring shall be equipped with a battery backup.~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

c. New and replacement smoke alarms installed after July 1, 2016, which receive their primary power from the building wiring where more than one smoke alarm is required to be installed shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms.

d. After June 30, 2021, a battery-powered smoke alarm listed in accordance with UL 217 that is newly installed or replaces an existing battery-powered smoke alarm must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least ten years. The battery requirements of this subrule do not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected as a part of a centrally monitored or supervised alarm system; that uses a low-power, radio frequency wireless communication signal.

210.3(8) to 210.3(12) No change.

661—210.4(100) Smoke detectors—notice and certification of installation.

~~**210.4(1)** *Notice of installation.* An owner of a rental residential building containing two or more units, who is required by law to install smoke detectors, shall notify the local fire department upon installation of required smoke detectors.~~

~~**210.4(2)** *Certification—single family dwelling units.* A person who files for a homestead tax credit pursuant to Iowa Code chapter 425 shall certify that the single-family dwelling unit for which the credit is filed has a smoke detector(s) alarm(s) installed in accordance with subrule 210.3(6) and paragraph 210.3(11)“a,” 210.3(12)“a,” or that such smoke detector(s) alarm(s) will be installed within 30 days of the date of filing for credit.~~

~~**210.4(3)** *Reports to fire marshal.* Each county or city assessor charged with the responsibility of accepting homestead tax credit applications shall obtain certification of smoke detection on a form acceptable to the state fire marshal, signed by the person making application for credit, and shall file a quarterly report with the fire marshal listing the name and address and stating whether applicant attested to a detector(s) being present at the time of application or that a detector(s) would be installed as required within 30 days.~~

661—210.5(100) Smoke detectors—new and existing construction.

210.5(1) *New construction.* All multiple-unit residential buildings and single-family dwellings which are constructed after July 1, 1991, shall include the installation of smoke detectors alarms meeting the requirements of rule 661—210.3(100).

210.5(2) *Existing construction.* All existing single-family units and multiple-unit residential buildings shall be equipped with smoke alarms or detectors as required in paragraph 210.3(11)“a.” 210.3(12)“a.”

These rules are intended to implement Iowa Code section 100.18.

[Filed 10/13/20, effective 12/9/20]

[Published 11/4/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5255C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to consumer and commercial fireworks

The State Fire Marshal hereby amends Chapter 265, “Consumer Fireworks Sales Licensing and Safety Standards,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 100.19.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 100.19.

Purpose and Summary

Since the inception of Iowa's Consumer Firework License, the State Fire Marshal has attempted to strike a balance between the needs of public safety and the industry. As such, the current rules in regard to inspections have never been strictly followed because of the time constraints on completing inspections during the short fireworks season. The amendments in this rule making account for what has been learned about this industry and best practices for striking an appropriate balance. Also included in this rule making are some updates to the website information and similar references.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 29, 2020, as **ARC 5105C**. No public comments were received. Two changes have been made since publication of the Notice. The word "sale" was changed to "sell" in paragraph 265.26(1)"c" in Item 3, and the last sentence of rule 661—265.40(100) in Item 6 was revised to clarify who will be given the opportunity to remedy violations that are not serious violations.

Adoption of Rule Making

This rule making was adopted by the State Fire Marshal on October 13, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of "Commercial fireworks," "Consumer fireworks," and "Serious violation" in rule **661—265.20(100)**:

"*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, 49 CFR 172, and APA Standard 87-1, Standard for the Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“*Consumer fireworks*” means small firework devices containing restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible effects by combustion, that comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission (CPSC), as set forth in CPSC 16 CFR 1500 and 1507, 49 CFR 172, and APA Standard 87-1, Standard for the Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics.

“*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.

ITEM 2. Amend rule 661—265.23(100) as follows:

661—265.23(100) Consumer fireworks retail sales license.

265.23(1) No change.

265.23(2) *Application form and instructions.* The application for a license for retail sales of first-class consumer fireworks or second-class consumer fireworks, or both first-class consumer fireworks and second-class consumer fireworks, shall be made to the state fire marshal. The application form and instructions may be found on the state fire marshal website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml dps.iowa.gov/divisions/state-fire-marshal/consumer-fireworks-licensing.

265.23(3) No change.

ITEM 3. Amend rule 661—265.26(100) as follows:

661—265.26(100) Plan review and inspection—guidelines.

265.26(1) *Inspections.*

a. Any retailer or community group offering for sale at retail any consumer fireworks, as described in APA 87-1, shall do so in accordance with NFPA 1124. 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. ~~In the discretion of the state fire marshal, prelicense inspections may not be required in the following circumstances:~~

~~(1) For permanent buildings or temporary structures in which only exempt amounts of first-class or second-class consumer fireworks are offered for sale, pursuant to section 7.3.1, NFPA 1124. The licensee shall make current product inventory information available to the state fire marshal upon request.~~

~~(2) For permanent buildings that were licensed in the previous year and for which there have been no changes to the site, building or floor plan. If any changes have been made, then a new or updated plan shall be submitted.~~

~~*b.* State licensing inspections shall only be conducted by persons approved by the state fire marshal. The inspection form shall be approved by the state fire marshal and will be available only to approved inspectors.~~

~~*c.* Each location, including the building(s) or structure(s) where the retail sales of consumer fireworks will be conducted or are conducted or where consumer fireworks are stored, must pass the state licensing inspection when conducted. Each location, including the building(s) or structure(s) must pass all elements of the inspection as conducted.~~

~~*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 state fire marshal or the state fire marshal’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, including rule 661—265.25(100).~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

c. If a retail location license is revoked, the location shall satisfy the requirements of subparagraph 265.26(1)“b”(1) prior to engaging in the sale of consumer fireworks the following year. The retail location shall not satisfy subparagraph 265.26(1)“b”(2) to sell consumer fireworks.

265.26(2) Reserved.

ITEM 4. Amend rule 661—265.27(100) as follows:

661—265.27(100) Issuance and display of license. The submitted application, any additional documents and information, and the completed inspection form shall be reviewed by the state fire marshal's office.

265.27(1) If all of the requirements are met and the correct license fee is paid, the state fire marshal shall issue the license. The license will be sent by email or can be downloaded from the state fire marshal's licensing website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml. The license shall be effective for the applicable date(s) for the sales of consumer fireworks.

265.27(2) The license must be clearly displayed at the location where the retail sales of consumer fireworks for which the license was issued are conducted.

ITEM 5. Amend rule 661—265.31(100) as follows:

661—265.31(100) Annual registration. Each wholesaler shall register with the state fire marshal annually.

265.31(1) Registration process. Each wholesaler shall complete the annual registration form and submit the form to the state fire marshal's office. The registration form and instructions may be found on the state fire marshal's licensing website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml.

265.31(2) Registration fee. Each wholesaler shall pay an annual registration fee of \$1,000 to the state fire marshal.

ITEM 6. Rescind rule 661—265.40(100) and adopt the following **new** rule in lieu thereof:

661—265.40(100) Revocation of license. If the state fire marshal or state fire marshal's designee determines during a physical site inspection that a serious violation has occurred, the license for that retail location shall be immediately revoked. Vendors will be given the opportunity to remedy violations that are not deemed serious violations.

ITEM 7. Rescind and reserve rules **661—265.41(100)** to **661—265.43(100)**.

ITEM 8. Amend subrule 265.51(4) as follows:

265.51(4) Application. The application for grant funds shall be made to the state fire marshal. The application form may be found at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml dps.iowa.gov/divisions/state-fire-marshal/consumer-fireworks-licensing. Applications must be received on or before June 30 of each year. The application shall include all of the following:

a. to *c.* No change.

[Filed 10/13/20, effective 12/9/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5256C**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed****Rule making related to highway program acknowledgment signs**

The Department of Transportation hereby amends Chapter 25, “Competition with Private Enterprise,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 23A.2(1) and 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 23A.2(1).

Purpose and Summary

This amendment revises Chapter 25 to update the Department activities exempted from the provisions of Iowa Code section 23A.2(1) by removing “rest area sponsorship.” The Department no longer has a rest area sponsorship program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5122C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on October 13, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making action is adopted:

TRANSPORTATION DEPARTMENT[761](cont'd)

Amend subrule 25.2(8) as follows:

25.2(8) Design, construction, reconstruction, inspection and maintenance of highways including, but not limited to, signs erected in the right-of-way and acknowledgment signs used in the adopt-a-highway; ~~rest area sponsorship~~ and highway helper sponsorship programs.

[Filed 10/13/20, effective 12/9/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5257C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to abandoned vehicles

The Department of Transportation hereby amends Chapter 480, "Abandoned Vehicles," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.89.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.71, 321.89 and 321.90.

Purpose and Summary

This rule making relates to the processing of abandoned vehicles by a police authority or a private entity and aligns with existing legal authority and Department practice. Chapter 480 and Iowa Code section 321.89 provide a specific process for taking possession and disposing of an abandoned vehicle. The intent of this rule making is to clarify the process for disposal of abandoned vehicles and to protect lienholders or others with a legal interest in the abandoned vehicle. The following paragraphs further explain the amendments:

Definitions. A new definition of "bidder registry" is added and the definition of "public auction" is amended to reflect the current options for conducting a public auction, including by electronic means, and to remove the requirement that the highest bidder is awarded the property if the bid represents the fair market value of the property. The intent of this amendment is to encourage use of a public auction to get the most value for the vehicle without necessarily requiring the bid to reach the vehicle's fair market value.

Abandoned vehicle records. These amendments specify the required abandoned vehicle records that a police authority or private entity must maintain to be available for inspection by a peace officer or employee of the Department if the vehicle is auctioned off or transferred to a demolisher. The required records to be available for inspection include the lien results, the National Motor Vehicle Title Information System (NMVTIS) report when no Iowa owner or lienholders are identified, the impound report, the abandoned vehicle notice, the proof of advertisement of a public auction, the certificate of disposal, a copy of the bidder registry and a copy of the affidavit of sale. Maintenance of these records will help ensure compliance with the steps for processing abandoned vehicles, which will reduce fraud and protect consumers.

Preconditions of sale. A new subrule is added to require a private entity or police authority to verify that the preconditions of selling an abandoned vehicle required under Iowa Code section 321.89 have been met prior to the sale of an abandoned vehicle. The intent of this subrule is to clarify who is responsible for verifying the preconditions of sale under Iowa Code section 321.89 prior to the sale.

TRANSPORTATION DEPARTMENT[761](cont'd)

Public auction. These amendments address the following requirements related to conducting a public auction of an abandoned vehicle:

- Clarifying that an initial bid at a public auction for the abandoned vehicle may be set at the amount that equals the actual cost of storage and towing of the vehicle.
- Limiting a police authority or private entity to two attempts at selling an abandoned vehicle at auction. If the vehicle cannot be sold at auction after two attempts, or if a sale cannot otherwise be made with enough proceeds to cover expenses associated with processing the abandoned vehicle, then the abandoned vehicle shall be transferred to a vehicle demolisher. This provision will help reduce the incentive to commit fraud. Because a police authority or private entity is entitled to recoup any unreimbursed costs for processing an abandoned vehicle from the Road Use Tax Fund in accordance with Iowa Code section 321.89(4)“b,” the Department wants to ensure everything possible is being done to achieve the highest sale price for the abandoned vehicle.
- Ensuring that interested members of the public are aware that a vehicle is being offered for sale by adopting certain advertising requirements, which will reduce claims that no one showed up at the public auction to bid on an abandoned vehicle.
- Complying with the requirements under Iowa Code section 321.89 that a public auction, if one was held, actually took place by requiring a bidder registry.
- Requiring a seller of an abandoned vehicle at auction to complete an odometer disclosure statement when an odometer statement is required under Iowa Code section 321.71.
- Clarifying that the costs of advertising the public auction to sell an abandoned vehicle, when submitted with the abandoned vehicle report, are reimbursable in accordance with Iowa Code section 321.89(4)“c” and Chapter 480.

Good-faith purchaser. New subrules are added to create consistency with Iowa Code section 321.89(4)“a” by protecting good-faith purchasers of abandoned vehicles that might otherwise be encumbered by liens. The amendments provide that despite any noncompliance on the part of the police authority or private entity with the requirements for disposing of an abandoned vehicle, a good-faith purchaser of an abandoned vehicle takes title free and clear of all liens and a county treasurer shall process the registration and issue a title for an abandoned vehicle accordingly.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 9, 2020, as **ARC 5170C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on October 14, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

TRANSPORTATION DEPARTMENT[761](cont'd)

group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Adopt the following new definition of "Bidder registry" in rule **761—480.1(321)**:
"Bidder registry" means a record of all persons who have registered to bid at a public auction.

ITEM 2. Amend rule **761—480.1(321)**, definition of "Public auction," as follows:
"Public auction," when used in Iowa Code section 321.89, means ~~a conventional oral~~ an auction setting open to the general public where. A public auction may be by electronic means, by sealed bid, or a conventional oral auction. The highest bidder is awarded the property. When the auction is a conventional oral auction, bidders shall register and bring the required bid deposit with them to the auction on the day and at the location and time specified for the sale, if a bid deposit is required. Bidders bid against each other one another until bidding stops. The high bidder is awarded the property provided the bid represents the fair market value of the property.

ITEM 3. Amend rule 761—480.2(321) as follows:

761—480.2(321) Location. Information, forms and instructions are available from: ~~Office of Vehicle and Motor Carrier Services Bureau,~~ Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278 or the department's ~~Web site~~ website at <http://www.iowadot.gov/mvd> www.iowadot.gov.

ITEM 4. Amend rule 761—480.3(321) as follows:

761—480.3(321) General requirements.

480.3(1) and **480.3(2)** No change.

480.3(3) To request reimbursement, the police authority or private entity shall complete and submit to the department an abandoned vehicle report on a form and in the manner prescribed by the department. Other forms may be accepted if they contain all information deemed necessary by the department.

480.3(4) A police authority shall also complete and submit the prescribed abandoned vehicle report form when remitting unclaimed profits pursuant to rule 761—480.7(321).

480.3(5) to **480.3(7)** No change.

480.3(8) A police authority or a private entity designated by a police authority holding a public auction may set the initial bid at an amount that equals the actual cost of storage and towing.

480.3(9) A police authority or private entity processing an abandoned vehicle shall maintain records for three years from the sale at a public auction or transfer of a motor vehicle to a demolisher. The records shall be open to inspection by any peace officer or any employee of the department. The required documents to be made available for inspection shall include:

a. The motor vehicle record request results letter issued by the department with lien information or evidence that a motor vehicle record was reviewed for owners and liens through other legal means.

b. The National Motor Vehicle Title Information System (NMVTIS) report when no Iowa owner or lienholders are identified.

c. The impound report with the date of abandonment.

d. One copy of the dated notice sent by the police authority or private entity to each owner and lienholder or proof of publication of notice with the publication date visible.

e. One copy of actual newspaper page advertising each public auction with advertisement and date visible.

f. A copy of the certificate of disposal for the private entity.

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g. The bidder registry for the police authority or private entity designated by a police authority holding a public auction.

h. A copy of affidavit of sale on a form prescribed by the department.

480.3(10) A police authority or private entity shall verify that the provisions of this chapter have been executed, prior to the sale of the abandoned vehicle, on a form prescribed by the department.

480.3(11) A police authority or private entity shall be limited to two attempts at selling an abandoned vehicle at a public auction. If the police authority or private entity cannot make a satisfactory sale at two public auctions, or if a sale cannot otherwise be made with enough proceeds to cover the expenses and costs in carrying out the abandoned vehicle process, the police authority or private entity shall sell or dispose of the vehicle to a demolisher for junk.

480.3(12) A purchaser in good faith of a motor vehicle sold as a result of the abandoned vehicle process takes the motor vehicle free of all rights of all persons, including holders of preexisting liens, notwithstanding any police authority or private entity's noncompliance with this chapter.

480.3(13) Upon presentation of a sales receipt, a county official shall process the registration and issuance of title to the purchaser free of all rights of all persons, including holders of preexisting liens, notwithstanding any police authority or private entity's noncompliance with this chapter.

ITEM 5. Renumber rules **761—480.4(321)** and **761—480.5(321)** as **761—480.7(321)** and **761—480.8(321)**.

ITEM 6. Adopt the following **new** rule 761—480.4(321):

761—480.4(321) Advertising.

480.4(1) A public auction shall be advertised at least seven days in advance within the county where the auction will take place or where the vehicle is physically located. At minimum, the manner of the advertising shall be:

a. Published in a newspaper which meets the requirements set forth in Iowa Code section 618.3; and

b. Posted in a conspicuous manner viewable to the public at the location where the public auction will occur. If the public auction is to be conducted by electronic means, the location shall be the specific website to be used for the auction.

480.4(2) If a vehicle is not sold at the scheduled public auction, any subsequent attempt to sell the vehicle by auction must be preceded by advertising pursuant to this rule.

ITEM 7. Adopt the following **new** rule 761—480.5(321):

761—480.5(321) Bidder registry.

480.5(1) A police authority or private entity designated by a police authority shall maintain for three years the bidder registry for each auctioned vehicle sold or offered for sale at a public auction. The bidder registry shall be open for inspection by any peace officer or department employee. For each auctioned vehicle, the bidder registry shall contain:

a. The full name of the bidder.

b. The bona fide address of the bidder.

c. A telephone number of the bidder.

d. The date of the auction.

e. The auctioned vehicle's make, model, model year, and vehicle identification number.

f. The location of the auction.

480.5(2) Reserved.

ITEM 8. Adopt the following **new** rule 761—480.6(321):

761—480.6(321) Odometer statement.

480.6(1) When a vehicle is sold at a public auction and the seller cannot attest to the true mileage reading of the vehicle's odometer, the seller shall complete the odometer disclosure statement, when required pursuant to Iowa Code section 321.71, in the following manner:

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- a. The odometer statement shall reflect the odometer mileage reading at the time of sale; and
- b. The odometer statement shall be marked indicating “odometer discrepancy,” certifying the odometer mileage reading is not the actual mileage.

480.6(2) The subsequent title issued for the vehicle shall record the vehicle’s mileage is “not actual.”

ITEM 9. Amend renumbered subrule 480.7(4) as follows:

480.7(4) Receipts. The police authority or private entity shall submit with the abandoned vehicle report detailed receipts showing payment for each expense incurred. A receipt must identify the date(s) of occurrence of the expense; for example, a receipt for storage must identify the beginning and ending dates. A receipt for both towing and storage must show separately the towing charge and the storage charge per day. Reimbursement shall be limited as follows:

a. to c. No change.

d. Advertising—up to \$20 per auction, or advertising receipt totals for two auctions, whichever is less, not to exceed \$40 total.

~~e.~~ e. Auction expenses—10 percent of the vehicle’s sale price or \$10 per vehicle, whichever is less. A receipt is not required for auction expense reimbursement.

ITEM 10. Amend **761—Chapter 480**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.71, 321.89 and 321.90.

[Filed 10/14/20, effective 12/9/20]

[Published 11/4/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

ARC 5258C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to motorized bicycle education

The Department of Transportation hereby amends Chapter 602, “Classes of Driver’s Licenses,” and Chapter 636, “Motorized Bicycle Rider Education,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.189.

Purpose and Summary

This rule making relates to motorized bicycle (moped) rider education and aligns with existing legal authority and Department practice, eliminates outdated or irrelevant requirements or options, and accommodates modern electronic procedures and terminology.

Rule 761—636.4(321) is amended to consolidate instructor and course approval requirements into a single rule because those requirements are the same for all programs seeking to provide a motorized bicycle rider education course, regardless of whether the provider is a school district or a private/commercial sponsor. However, an application fee only pertains to private/commercial sponsors. The amendments to this rule also specify the length of validity of the course approval and renewal procedures.

This rule making includes a conforming change to subrule 602.2(1) to provide that a certificate of completion of an approved course may be submitted electronically through the Department’s online

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reporting system by a participating Iowa-approved motorized bicycle rider education provider. This rule making also includes an amendment to update the implementation sentence for rule 761—602.26(321).

Current terminology within Chapter 636 is amended to refer to program approval rather than a license, and instructor rather than a teacher, and the chapter is amended to specify that the instructor must be listed on the program application to be approved.

Finally, the amendments incorporate the clear driving record standards used by the Department for behind-the-wheel driver education instructors and motorcycle rider instructors and clarify the Department's current practice of either canceling or denying the instructor's approval if the instructor does not meet the instructor qualifications under the chapter.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 26, 2020, as **ARC 5154C**. No public comments were received. However, one change from the Notice has been made. Due to recently adopted amendments to subrule 602.2(1) in **ARC 5204C** (IAB 10/7/20), subrule 602.2(1) in Item 1 has been updated to reflect the current content of the subrule.

Adoption of Rule Making

This rule making was adopted by the Department on October 13, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 602.2(1), introductory paragraph, as follows:

602.2(1) Certificate of completion. Proof of successful completion of an Iowa-approved course in driver education, motorcycle rider education, or motorized bicycle education shall be submitted to the department on Form 430036 shall be used to submit proof of successful completion of an Iowa-approved course in driver education, motorcycle rider education or motorized bicycle education, except that proof of successful completion of an Iowa-approved course in driver education or motorcycle rider education may instead be submitted or through an online reporting system used by participating Iowa-approved driver education schools, motorcycle rider education, or motorcycle motorized bicycle rider education providers.

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ITEM 2. Amend rule ~~761—602.26(321)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.177₂, 321.180B₂, 321.189₂, 321.194 as amended by 2019 Iowa Acts, Senate File 140, sections 1 and 2; and 321.196.

ITEM 3. Amend rule 761—636.1(321) as follows:

761—636.1(321) Information and location. Applications, forms and information regarding this chapter are available by mail from the ~~Office of Driver and Identification Services Bureau~~, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at ~~(515)237-3153~~ (515)244-8725; or by facsimile at ~~(515)237-3071~~ (515)239-1837.

ITEM 4. Adopt the following new definitions of “Instructor” and “Program approval” in rule **761—636.2(321)**:

“*Instructor*” means a person approved by the department to instruct a motorized bicycle rider education course.

“*Program approval*” means department approval of an entity’s motorized bicycle rider education course and instructors.

ITEM 5. Amend rule 761—636.4(321) as follows:

761—636.4(321) Agencies or institutions Approved program in motorized bicycle rider education.

636.4(1) Program approval. ~~Any school district, area education agency, merged area school, other agency or individual entity planning to offer a motorized bicycle rider education course must receive course program approval from the department prior to the beginning of the first class that is offered and annually thereafter. The agency or institution or individual shall complete a form provided by the department to apply for course approval. Course approval will be issued for a calendar year or remainder of a calendar year. The approval expires on December 31 and must be renewed annually.~~

636.4(2) Application and fees. Application for initial program approval or annual program approval renewal shall be made to the department in a manner determined by the department. The application fee is \$25 for a private or commercial sponsor. The fee must be paid by cash, money order or check unless the department approves payment of the fee by electronic means. A money order or check must be for the exact amount and should be made payable to the Treasurer, State of Iowa, or the Department of Transportation.

636.4(3) Initial program approval and annual renewal. Program approval to provide motorized bicycle rider education shall be issued for a calendar year or remainder of a calendar year. The program approval expires on December 31 but remains valid for an additional 30 days after the expiration date. The application for renewal shall be submitted to the department within 60 days of the expiration date, unless otherwise approved by the department.

636.4(4) Cancellation and denial. The department shall cancel or deny program approval if the course or instructors are no longer approved.

ITEM 6. Rescind rule ~~761—636.5(321)~~.

ITEM 7. Renumber rules ~~761—636.7(321)~~ to ~~761—636.9(321)~~ as ~~761—636.5(321)~~ to **761—636.7(321)**.

ITEM 8. Amend renumbered subrule 636.5(1) as follows:

636.5(1) Classroom instruction. An approved course shall consist of a minimum of six clock hours of classroom instruction which includes the instructional components contained in subrule ~~636.7(3)~~ 636.5(3).

ITEM 9. Amend renumbered rule 761—636.6(321) as follows:

761—636.6(321) Teacher qualifications Instructor approval. A teacher An instructor of an approved motorized bicycle rider education course must be listed on the application for program approval as provided in subrules 636.4(1) and 636.4(2) and approved by the department.

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636.6(1) *Instructor qualifications.* An instructor of an approved course shall possess a valid driver's license allowing unaccompanied driving other than a temporary restricted license and shall be able to operate a motorized bicycle. ~~A teacher~~ An instructor must also have a clear driving record for the previous two years. A clear driving record means the ~~teacher~~ instructor has:

636.6(1) a. Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

636.6(2) b. No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.

636.6(3) c. Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.

636.6(4) d. No record of an accident for which the individual was convicted of a moving traffic violation a law enforcement investigative report indicating a contributive motor vehicle accident that caused the death or serious injury of another person.

e. No record of a law enforcement investigative report indicating two or more contributive motor vehicle accidents in a two-year period.

636.6(2) *Cancellation and denial.* When an instructor of an approved program does not meet the qualifications under this chapter, the department shall remove the instructor from the approved program and cancel or deny the approval of the program unless the entity has submitted an application for or secured approval of an alternate instructor from the department.

ITEM 10. Amend renumbered rule 761—636.7(321) as follows:

761—636.7(321) Evaluation. Each student shall be evaluated by the instructor to determine successful completion of the course.

[Filed 10/13/20, effective 12/9/20]

[Published 11/4/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.

PUBLIC HEARINGS: POSSIBLE USE OF TELEPHONIC OR ELECTRONIC FORMAT DUE TO COVID-19

To protect public health and promote efficient government operations during the COVID-19 outbreak, the format of a public hearing on a notice of intended action (NOIA) scheduled and published in the Iowa Administrative Bulletin (IAB) may be changed, without further publication in the IAB, from an in-person hearing at a physical location to a hearing conducted solely via telephonic or electronic means. For information on whether the format of a public hearing as published in the IAB has changed and how to participate telephonically or electronically in such a hearing, see the Internet site of the relevant agency or contact the agency directly using the contact information published in the NOIA. See also section 109 of the Governor's proclamation of disaster emergency issued October 16, 2020: governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.10.16.pdf.