



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XLI
November 7, 2018

NUMBER 10
Pages 1059 to 1124

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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2018

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
12	Wednesday, November 14, 2018	December 5, 2018
13	Friday, November 30, 2018	December 19, 2018
14	Wednesday, December 12, 2018	January 2, 2019

PLEASE NOTE:

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

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

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Capitol complex operations, 100.3, 100.4(12) IAB 10/24/18 ARC 4084C	Procurement Conference Room, A Level Hoover State Office Bldg. Des Moines, Iowa	November 14, 2018 10 to 11 a.m.
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HUMAN SERVICES DEPARTMENT[441]

Mental health and disability services regions, amendments to ch 25 IAB 10/10/18 ARC 4044C	Polk County River Place Rooms 1 and 1A 2309 Euclid Ave. Des Moines, Iowa	November 14, 2018 2:30 to 4:30 p.m.
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IOWA FINANCE AUTHORITY[265]

Wastewater and drinking water treatment financial assistance program, amendments to ch 28 IAB 10/24/18 ARC 4090C	Authority Offices 2015 Grand Ave. Des Moines, Iowa	November 14, 2018 9 a.m.
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LABOR SERVICES DIVISION[875]

Hoistway lighting and conduit, 71.1, 72.10, 72.13(7), 73.8(8) IAB 10/24/18 ARC 4088C	150 Des Moines St. Des Moines, Iowa	November 14, 2018 11 a.m. (If requested)
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MEDICINE BOARD[653]

Application and licensure fees—acupuncturists, genetic counselors, 8.2(2), 8.14 IAB 10/24/18 ARC 4094C	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	November 20, 2018 11:30 a.m. to 12 noon
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Standards of practice for medical directors at medical spas—delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians, 13.8 IAB 10/24/18 ARC 4093C	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	November 20, 2018 10 a.m.
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Standards of practice—medical cannabidiol, 13.15 IAB 10/24/18 ARC 4082C	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	November 20, 2018 9 a.m.
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Licensure of genetic counselors, ch 20 IAB 10/24/18 ARC 4095C	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	November 20, 2018 11 a.m.
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RACING AND GAMING COMMISSION[491]

Confidential records; licensing; licensees' responsibilities; racing; definition of "minus pool"; gambling games; facility internal controls, amendments to chs 3, 5 to 8, 10 to 12 IAB 11/7/18 ARC 4107C	Commission Office, Suite 100 1300 Des Moines St. Des Moines, Iowa	November 27, 2018 9 a.m.
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REVENUE DEPARTMENT[701]

Personal transportation service, 26.80 IAB 11/7/18 ARC 4108C	Auditorium Wallace State Office Bldg. Des Moines, Iowa	November 27, 2018 1 to 2 p.m. (If requested)
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Water service excise tax, ch 97 IAB 10/24/18 ARC 4083C	Room 430, Fourth Floor Hoover State Office Bldg. Des Moines, Iowa	November 13, 2018 1 to 2 p.m. (If requested)
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Exemptions primarily benefiting manufacturers and other persons engaged in processing, 211.1, 230.2(1), 230.15(4) IAB 11/7/18 ARC 4109C	Auditorium Wallace State Office Bldg. Des Moines, Iowa	November 27, 2018 9 to 10 a.m.
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UTILITIES DIVISION[199]

Rate cases, tariffs, and rate regulation election practice and procedure, amendments to ch 26 IAB 10/10/18 ARC 4046C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	December 18, 2018 10:30 a.m. to 12:30 p.m.
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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 4106C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to conditions of Medicaid eligibility and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 75, “Conditions of Eligibility,” and Chapter 76, “Enrollment and Reenrollment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418, section 107.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418, section 107.

Purpose and Summary

Currently, Medicaid may be available to a person who was pregnant or an infant under the age of one during any of the three months preceding the month in which an application is filed. 2018 Iowa Acts, Senate File 2418, section 107, extends this applicability by stating, “[e]ffective July 1, 2018, a three-month retroactive Medicaid coverage benefit shall apply to a Medicaid applicant who is otherwise Medicaid-eligible and is a resident of a nursing facility licensed under chapter 135C.”

These proposed amendments revise the definitions of “retroactive certification period” and “retroactive period” in Chapter 75 to correctly reference subrule 76.13(3), which defines who is eligible for Medicaid coverage during any or all of the three months preceding the month in which an application is filed.

These amendments also update subrule 76.13(3) to reinstate a three-month retroactive coverage benefit for applicants who are residents of a nursing facility licensed under Iowa Code chapter 135C at the time of application and are otherwise Medicaid-eligible.

Fiscal Impact

This rule making has a fiscal impact of \$100,000 annually or \$500,000 over five years to the State of Iowa. Senate File 2418 reinstates the three-month retroactive Medicaid coverage benefit for residents of nursing facilities if the residents are otherwise Medicaid-eligible during the retroactive period. Reinstating the three-month retroactive Medicaid coverage benefit to this population will allow more eligible people to receive Medicaid benefits during the retroactive months. Funding to restore retroactive eligibility for residents of nursing facilities was authorized during the 2018 Legislative Session.

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 pursuant to rule 441—1.8(17A,217).

HUMAN SERVICES DEPARTMENT[441](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 27, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

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 **441—75.25(249A)**, definitions of “Retroactive certification period” and “Retroactive period,” as follows:

“*Retroactive certification period*” for medically needy shall mean one, two, or three calendar months prior to the date of application, as provided in 441—subrule 76.13(3). The retroactive certification period begins with the first month Medicaid-covered services were received and continues to the end of the month immediately prior to the month of application.

“*Retroactive period*” shall mean the three or fewer calendar months immediately preceding the month in which an application is filed, pursuant to 441—subrule 76.13(3).

ITEM 2. Amend subrule 76.13(3) as follows:

76.13(3) Retroactive enrollment.

a. Except as provided in paragraph 76.13(3)“e,” medical assistance shall be available for all or any of the three months preceding the month in which an application is filed to a person who was pregnant, ~~or~~ an infant (under the age of one), or a resident of a nursing facility licensed under Iowa Code chapter 135C during any of the three months and who:

(1) and (2) No change.

b. No change.

c. Retroactive medical assistance shall be made available when an application has been made on behalf of a deceased person who was an infant, ~~or was pregnant,~~ or a resident of a nursing facility licensed under Iowa Code chapter 135C if the conditions in paragraph 76.13(3)“a” are met.

d. and e. No change.

ARC 4107C**RACING AND GAMING COMMISSION[491]****Notice of Intended Action****Proposing rule making related to updates to racing and gaming rules and providing an opportunity for public comment**

The Racing and Gaming Commission hereby proposes to amend Chapter 3, "Fair Information Practices," Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," Chapter 6, "Occupational and Vendor Licensing," Chapter 7, "Greyhound Racing," Chapter 8, "Wagering, Simulcasting and Advance Deposit Wagering," Chapter 10, "Thoroughbred and Quarter Horse Racing," Chapter 11, "Gambling Games," and Chapter 12, "Accounting and Cash Control," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 99D.7 and 99F.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 99D and 99F and 2018 Iowa Acts, House File 2349.

Purpose and Summary

Item 1 updates a reference to the Iowa Rules of Civil Procedure.

Item 2 updates an Iowa Code reference.

Item 3 updates the rule regarding confidential records to be consistent with 2018 Iowa Acts, House File 2349, which amends Iowa Code sections 99D.7(23) and 99F.4(22).

Item 4 updates audit requirements for licensees.

Item 5 clarifies that contracts with licensed manufacturers and distributors for nongaming items are not exempt from Commission approval.

Item 6 changes the definition of wagering area.

Items 7 and 8 clarify occupational licensing requirements.

Item 9 clarifies that a person may file for a new license upon expiration of any suspension of 365 days or more.

Item 10 updates the rule to clarify the specific lease required.

Item 11 updates language to be consistent with that in Chapter 10.

Item 12 amends the definition of "minus pool."

Item 13 clarifies payments of purses. In addition, the content of subrules 10.6(14) and 10.6(15), which are rescinded in Item 18, is incorporated into subrule 10.4(15).

Item 14 clarifies the consequences if a trainer or designee is not present for the administration of furosemide.

Item 15 clarifies the consequences of a horse's not being in the paddock at the required time.

Item 16 clarifies the jockey suspension rule.

Item 17 clarifies Iowa-foaled horse requirements for specific races.

Item 18 is addressed with Item 13.

Item 19 changes how long positive drug test results are retained.

Item 20 updates subrule 11.5(1) to be consistent with subrule 11.7(6).

Item 21 allows for coin pusher mechanical devices.

Item 22 updates requirements for linked progressive slot machines.

Item 23 clarifies retention for card boxes and receipts for the playing cards.

RACING AND GAMING COMMISSION[491](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

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

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 Commission no later than 4:30 p.m. on November 27, 2018. Comments should be directed to:

Barb Blake
Iowa Racing and Gaming Commission
1300 Des Moines Street
Des Moines, Iowa 50309
Email: barb.blake@iowa.gov

Public Hearing

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

November 27, 2018
9 a.m.

Commission Office, Suite 100
1300 Des Moines Street
Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission 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 paragraph **3.13(2)“g”** as follows:
g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. ~~122.41~~ 1.503, the rules of evidence, the Code of Professional Responsibility, and case law.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 2. Amend paragraph **3.13(2)“i”** as follows:

i. Information gathered during an investigation during pendency of the investigation or information requested for inspection by the commission or a representative of the commission. (Iowa Code sections ~~99D.7(8)~~ 99D.7(9), 99D.19(3), 99F.4(6) and 99F.12(4))

ITEM 3. Adopt the following **new** paragraph **3.13(2)“o”**:

o. Names, social security numbers and any other personally identifiable information regarding persons who have voluntarily excluded themselves and are a part of the interactive Internet site maintained by the commission. (Iowa Code sections 99D.7(23) and 99F.4(22) as amended by 2018 Iowa Acts, House File 2349)

ITEM 4. Rescind rule 491—5.2(99D,99F) and adopt the following **new** rule in lieu thereof:

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13.

5.2(1) The audit of financial transactions and condition of licensee’s operation shall include:

- a.* An internal control letter;
- b.* Documentation that the county board of supervisors selected the auditing firm;
- c.* A balance sheet;
- d.* A profit-and-loss statement pertaining to the licensee’s activities in the state, including a breakdown of expenditures and subsidies.

5.2(2) If the licensee’s fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report.

5.2(3) In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(4) An engagement letter for the audit between the licensee and auditing firm shall be available upon request. Conditions of engagement for the audit shall include, at a minimum, the following requirements:

- a.* The auditing firm shall immediately inform the commission of any material errors, irregularities or illegal acts that come to the firm’s attention during the course of an audit.
- b.* The auditing firm shall inform the commission in writing of matters that come to the firm’s attention that represent significant deficiencies in the design or operation of the internal control structure.
- c.* Audit staff conducting the audit must have experience or training in the gaming industry.
- d.* Audit staff must perform a portion of the audit on the premises of the licensed facility.
- e.* The auditing firm agrees to respond timely to all reasonable requests of successor auditors.
- f.* The auditing firm agrees, if requested by the commission, to provide licensee management and the commission with recommendations designed to help the licensee make improvements in its internal control structure and operation, and other matters that are discovered during the audit.

5.2(5) Consolidated financial statements may be filed by commonly owned or operated establishments with the following conditions:

- a.* Separate financial statements are included for each individual entity licensed in Iowa.
- b.* The auditing firm must audit and issue a report on the separate financial statements that expresses an opinion for each individual entity licensed in Iowa.
- c.* Audit staff must perform a portion of the audit on the premises of each individual entity licensed in Iowa.
- d.* All other requirements in rule 491—5.2(99D,99F) are met and included for each entity licensed in Iowa unless an exception is granted in writing by the commission (or administrator).

5.2(6) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to the state, city, and county; unclaimed winnings; purses paid indicating sources;

RACING AND GAMING COMMISSION[491](cont'd)

total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

5.2(7) The annual audit report required by Iowa Code section 99F.13 shall include:

a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and county endowment fund; and regulatory fees.

b. A report on whether material weaknesses in internal accounting control exist. A report shall be filed for each individual entity licensed in Iowa if a consolidated audit is provided.

ITEM 5. Amend subparagraph **5.4(8)“a”(1)**, introductory paragraph, as follows:

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 regardless of payment method are agreements that qualify for submission to and approval by the commission. Contracts and business arrangements with entities licensed pursuant to rule 491—11.13(99F) to obtain gambling games and implements of gambling, as defined by rule 491—11.1(99F), are exempt from submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

ITEM 6. Amend subrule 5.5(11) as follows:

5.5(11) *Designated wagering area.* The designated wagering area is ~~a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review and approval.~~ an area of a racetrack, designated by a licensee and approved by the commission, in which a licensee may receive from a person wagers of money on a horse or dog in a race selected by the person making the wagers as designated by the commission. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. Exceptions to this rule must be approved in writing by the commission.

ITEM 7. Amend paragraph **6.5(1)“k”** as follows:

k. A license shall be denied if an applicant is not of good repute ~~and~~ or moral character. Any evidence concerning a licensee’s current or past conduct, dealings, habits, or associations relevant to that individual’s character ~~and~~ or reputation may be considered. The commission representative shall decide what weight and effect evidence shall have in the determination of whether there is substantial evidence that the individual is not of good reputation ~~and~~ or character. Applicants who hold positions of higher responsibility may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role.

ITEM 8. Amend paragraph **6.5(2)“b”** as follows:

b. Judgments. Whenever any person licensed to engage in racing suffers a final judgment entered against that person in any court of competent jurisdiction within the United States, when that judgment is based wholly, or in part, upon an indebtedness incurred by that person for supplies, equipment, or services furnished in connection with racing, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended.

ITEM 9. Amend subrule 6.6(2) as follows:

6.6(2) Any person whose license was suspended for 365 days or more may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set forth in 6.6(1)“a,” “b,” and “c” above. If a person’s license has not expired after the 365-day suspension, the person must have a hearing before a board to determine if the person has satisfied all of the conditions set forth in 6.6(1)“a,” “b,” and “c” above prior to that individual’s participating in racing or gaming.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 10. Amend paragraph **7.3(6)“b”** as follows:

b. The racing secretary is responsible for maintaining a file of ~~all NGA~~ the NGA certificate, Iowa Greyhound Park lease (or appropriate substitute) and ownership papers on greyhounds racing at the meeting. The racing secretary shall inspect all papers and documents dealing with owners and trainers, partnership agreements, appointments of authorized agents, and adoption of kennel names to be sure they are accurate, complete, and up to date. The racing secretary has the authority to demand the production of any documents or other evidence in order to be satisfied as to their validity and authenticity to ensure compliance with the rules. The racing secretary shall be responsible for the care and security of the papers while the greyhounds are located on facility property. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a greyhound filed with the racing secretary shall be available for public inspection.

ITEM 11. Amend paragraph **7.14(3)“e”** as follows:

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of ~~tests~~ a test suspicious or positive for prohibited substances, the ~~tests~~ test shall be reconfirmed; and the remaining portion of the sample, if available, preserved and protected for ~~two years~~ one year following close of meet.

ITEM 12. Amend rule **491—8.1(99D)**, definition of “Minus pool,” as follows:

“*Minus pool*” means when the total amount of money to be returned to the public exceeds what is in the pool because of the deduction of a commission and because of the rule stipulation that no mutuel tickets shall be paid at less than ~~\$1.40~~ \$1.05 for each \$1.00 wagered.

ITEM 13. Amend subrule 10.4(15) as follows:

10.4(15) Horsemen’s bookkeeper.

a. to c. No change.

d. Payment of purses.

(1) and (2) No change.

(3) The horsemen’s bookkeeper shall disburse the purse of each race and all stakes, entrance money, and jockey fees, upon request, within 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory two race days of the conclusion of the race day for all horses that were not selected for postrace drug testing.

(4) For horses that were selected for postrace drug testing, the horsemen’s bookkeeper shall disburse the purse of such horses for all stakes, entrance money, and jockey fees, upon request, within two race days of receipt of notification that all tests with respect to such horses have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(4) (5) Absent a prior request, the horsemen’s bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such ~~races~~ horses that have been selected for postrace drug testing have cleared the drug testing laboratory as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

(5) (6) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen’s bookkeeper shall disburse the purse of such horses having been selected for postrace drug testing within 48 hours two race days of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

e. No change.

RACING AND GAMING COMMISSION[491](cont'd)

f. Purse money presumption. The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

ITEM 14. Amend subparagraph **10.5(1)“a”(6)** as follows:

(6) Being present to witness the administration of furosemide during the administration time and sign as the witness on the affidavit form. A licensed designee of the trainer may witness the administration of the furosemide and sign as the witness on the affidavit form; however, this designee may not be another practicing veterinarian or veterinary assistant. If the trainer or designee is not present or does not allow for the administration of furosemide to a horse to be run on furosemide, said horse will be placed on the steward’s list for a minimum of five days starting the day after the violation.

ITEM 15. Amend subparagraph **10.5(1)“a”(24)** as follows:

(24) Presenting the trainer’s horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered. Any horse failing to report to the paddock will be placed on the steward’s list for a minimum of five days starting the day after the violation.

ITEM 16. Amend subparagraph **10.5(2)“v”(4)** as follows:

(4) Riding suspensions of ten days or less and participating in designated races. The stewards appointed for a race meeting shall immediately, prior to the commencement of that meeting, designate the stakes, futurities, futurity trials, or other races in which a jockey will be permitted to compete, notwithstanding the fact that such jockey is under suspension for ten days or less for a careless riding infraction at the time the designated race is to be run.

1. to 3. No change.

4. A day in which a jockey participated in one designated race while on suspension shall count as a suspension day. If a jockey rides in more than one designated race on a race card while on suspension, the day shall not count as a suspension day. Each designated trial race for a stake shall be considered one race. A jockey who rides in more than one designated race shall be allowed to be named to ride other races on a card, and such race card shall not count as a suspended race day.

ITEM 17. Amend paragraph **10.6(2)“n”** as follows:

~~n. Iowa-foaled horse. An Iowa-foaled horse may be entered in an Iowa-bred race without having its official jockey club registration papers stamped, but shall not compete~~ be entered in a race limited to Iowa-foaled horses unless the horse is registered with and the papers are stamped by the department of agriculture and land stewardship. An Iowa-foaled horse would be allowed to run in an open race without the stamp, but would be ineligible for Iowa-bred supplement, Iowa-bred breeders awards and Iowa-bred breeders supplement.

ITEM 18. Rescind and reserve subrules **10.6(14)** and **10.6(15)**.

ITEM 19. Amend paragraph **10.7(3)“e”** as follows:

~~e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of tests a test suspicious or positive for prohibited substances, the tests test shall be reconfirmed, and the remaining portion, if available, of the sample shall be preserved and protected for two years~~ one year following close of meet.

ITEM 20. Amend subrule 11.5(1) as follows:

11.5(1) Craps, roulette, twenty-one (blackjack), baccarat, big six and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

ITEM 21. Adopt the following **new** subrule 11.5(5):

11.5(5) Mechanical devices employing kickers or plates to direct coins, tokens or chips to fall over an edge into a payout hopper may be authorized as gambling games, subject to the following conditions:

a. All devices are subject to the requirements of rule 491—11.4(99F).

b. Devices shall accept no more than one coin, token or chip per play.

RACING AND GAMING COMMISSION[491](cont'd)

c. Tokens or chips used in devices shall have a value defined by the facility. Each assigned value must be displayed on the device. Values are subject to approval by the administrator.

d. Merchandise, coins, tokens, chips or other legal tender may be added to the device at the discretion of the facility:

(1) Anything of value added to a device must be in accordance with the approval of the device under the requirements of rule 491—11.4(99F); and

(2) Anything of value added to a device shall be documented, and documentation shall be retained in accordance with the retention requirements of 491—subrule 5.4(14).

e. Any coins, tokens or chips collected by the facility or not returned to individuals wagering on a device shall be included as gross receipts for the calculation of wagering tax on adjusted gross receipts:

(1) When a device is removed from play, coins, tokens, chips or other legal tender that were added to the device may be used to offset gross receipts for the calculation of wagering tax on adjusted gross receipts; and

(2) Merchandise or other items of value added to a device shall not be considered in the calculation of wagering tax on adjusted gross receipts.

f. Merchandise, coins, tokens, chips or other legal tender shall not be removed from a device while it remains in operation, except as winnings to an individual from a wager, or as the result of internal mechanisms of the device for collecting revenue, approved in accordance with rule 491—11.4(99F).

g. Anything of value in the machine shall not be tampered with or adjusted while a device remains in operation, except as required to return a malfunctioning device to operation.

ITEM 22. Amend subrule 11.12(7) as follows:

11.12(7) *Linked machines.* Each machine on the link shall have the same probability of winning the progressive jackpot, adjusted for the total amount wagered. The product of the odds of winning the progressive jackpot multiplied by the maximum amount wagered shall be equal for all games on the link. For the purpose of this calculation, the odds of winning the progressive jackpot, adjusted for amount wagered, multiplied by 0.05 percent shall be the maximum allowable tolerance when linked with any other game.

ITEM 23. Amend subparagraph 12.3(1)“g”(3) as follows:

(3) The procedure and period to retain the receipt and the details of use. The period of retention must correspond with records maintained by the manufacturer of the cards in accordance with the process submitted pursuant to 491—paragraph 11.7(9)“b.”

ARC 4108C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to personal transportation service and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 26, “Sales and Use Tax on Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 423.2 and 423.3 as amended by 2018 Iowa Acts, Senate File 2417.

REVENUE DEPARTMENT[701](cont'd)

Purpose and Summary

This rule making proposes to implement changes to the taxability of personal transportation services made by division XI of 2018 Iowa Acts, Senate File 2417. This rule making defines personal transportation service, addresses sourcing of personal transportation service, and describes the applicable exemptions.

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 2417. That estimate predicts that in FY 2019, the taxation of “ride sharing services” as enacted in Senate File 2417 will result in increased revenue of \$3.5 million and, by FY 2024, will result in increased revenue of \$18.7 million.

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 701—7.28(17A).

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 27, 2018. Comments should be directed to:

Joe Fraioli
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.4057
Email: joe.fraioli@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

November 27, 2018
1 to 2 p.m.

Auditorium
Wallace State Office Building
Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the 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

REVENUE DEPARTMENT[701](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 action is proposed:

Rescind rule 701—26.80(422,423) and adopt the following new rule in lieu thereof:

701—26.80(422,423) Personal transportation service.

26.80(1) *Personal transportation service defined.* “Personal transportation service” means the arrangement or provision of transportation of a person or persons for consideration, regardless of whether the person or entity providing such service supplies or uses a vehicle in conjunction with the service. “Personal transportation service” includes, but is not limited to, the following:

a. Transportation services provided by a human driver, including but not limited to drivers with a Class C, Class D endorsement 3, or Class M license, or by a chauffeur as defined in Iowa Code section 321.1(8). Examples of such services include, but are not limited to, taxi services, driver services, limousine services, bus services, shuttle services, and rides for hire;

b. Transportation services provided by a nonhuman driver, autonomous vehicle, or driverless vehicle; and

c. Ride sharing services, including but not limited to prearranged rides as defined in Iowa Code section 321N.1(4).

26.80(2) *Tax imposed; sourcing.* On and after January 1, 2019, the sales price from rendering, furnishing, or performing a personal transportation service in Iowa is subject to Iowa sales tax. The tax is imposed if the personal transportation service is first used in Iowa and is sourced to the location at which the service is first received.

EXAMPLE: R schedules a personal transportation service while at R’s residence in Des Moines. R schedules the transportation service to transport R from Grinnell to Iowa City. R independently travels to Grinnell, where R enters a vehicle owned by the transportation service. The transportation service takes R from Grinnell to Iowa City, where the service ends and R pays for the service. The sale is sourced to Grinnell, the location at which R first received the transportation service. The transportation service must charge sales tax and the applicable local option tax in Grinnell, even though R scheduled the service while in Des Moines and the service concluded and payment was made in Iowa City.

26.80(3) *No tax imposed on interstate motor carrier transportation service.* Where a personal transportation service involves interstate travel by a motor carrier as defined in 49 U.S.C. Section 13102(14), no tax shall be imposed on the transaction to the extent prohibited by 49 U.S.C. Section 14505.

26.80(4) *Exemption for transportation services furnished by a qualified public transit system, medical transportation service, or paratransit service.* The sales price from sales of transportation services by public transit systems, medical transportation services, or paratransit services is exempt from tax. For purposes of the exemption under Iowa Code section 423.3(105) as enacted in 2018 Iowa Acts, Senate File 2417, section 188, the following definitions shall apply:

“*Medical transportation*” means a personal transportation service for an individual to travel to a health care provider for the individual’s medical care. Medical transportation is not limited to transportation services for immediate life-threatening or serious injuries.

“*Paratransit service*” means a personal transportation service provided to individuals with disabilities.

“*Public transit system*” means a public transit system as defined in Iowa Code section 324A.1(4).

This rule is intended to implement Iowa Code sections 423.2(6) “*ac*” and 423.3(105) as enacted in 2018 Iowa Acts, Senate File 2417.

ARC 4109C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to exemptions primarily benefiting manufacturers and other persons engaged in processing and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 211, “Definitions,” and Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3 as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

This proposed rule making seeks to implement the changes to Iowa Code section 423.3(47)“d” as amended by 2018 Iowa Acts, Senate File 2417.

Iowa Code section 423.3(47) provides a sales tax exemption for the “sales price from the sale or rental of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies” if those items are, in relevant part, “directly and primarily used in processing by a manufacturer.”

New definitions of “manufacturer” and “manufacturing” were enacted in Senate File 2417. This rule making proposes to amend the Department’s rules implementing that provision so they reflect the legislative changes, which became effective on May 30, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. According to the Legislative Services Agency’s fiscal estimate for Senate File 2417, the Iowa Code changes implemented by this proposed rule making will increase General Fund revenues by \$13.8 million in FY 2019, \$13.9 million in FY 2020, \$14.4 million in FY 2021, \$14.9 million in FY 2022, \$15.5 million in FY 2023, and \$16.1 million in FY 2024.

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 701—7.28(17A).

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 27, 2018. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

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

November 27, 2018
9 to 10 a.m.

Auditorium
Wallace State Office Building
Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the 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 **701—211.1(423)**, definition of “Manufacturer,” as follows:

“Manufacturer” means ~~any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, or combining of different materials or by packing of meats with an intent to sell at a gain or profit the same~~ as defined in Iowa Code section 423.3(47) as amended by 2018 Iowa Acts, Senate File 2417.

ITEM 2. Rescind and reserve subrule **230.2(1)**.

ITEM 3. Rescind subrule 230.15(4) and adopt the following **new** subrule in lieu thereof:
230.15(4) Manufacturer:

a. Generally. Iowa Code section 423.3(47)“d”(4) as amended by 2018 Iowa Acts, Senate File 2417, section 183, abrogates *The Sherwin-Williams Company v. Iowa Department of Revenue*, 789 N.W.2d 417 (Iowa 2010).

b. Definitions.

“Construction contracting” means engaging in or performing a construction contract as defined in rule 701—219.8(423).

“Manufacturer” means the same as defined in Iowa Code section 423.3(47) as amended by 2018 Iowa Acts, Senate File 2417.

“Transporting for hire” means the service of moving persons or property for consideration, including but not limited to the use of a “personal transportation service” as that term is described in Iowa Code section 423.2(6) as amended by 2018 Iowa Acts, Senate File 2417, section 170, and rule 701—26.80(422,423).

EXAMPLE: Company A mixes and pours cement. Some of Company A's sales are made in fulfillment of a contract with a general contractor responsible for building a road. Regardless of the portion of Company A's total revenue generated from subcontracted road construction work, Company

REVENUE DEPARTMENT[701](cont'd)

A is engaged in “construction contracting” and cannot claim the exemption because persons engaged in “construction contracting” are not manufacturers under Iowa Code section 423.3(47) “d”(4)(c) as enacted in 2018 Iowa Acts, Senate File 2417.

ITEM 4. Renumber subrule **230.15(5)** as **230.15(6)**.

ITEM 5. Adopt the following **new** subrule 230.15(5):

230.15(5) Manufacturing.

a. Activities commonly understood to be manufacturing. “Manufacturing” means the same as defined in Iowa Code section 423.3(47) as amended by 2018 Iowa Acts, Senate File 2417.

b. Premises primarily used to make retail sales.

(1) A person engaged in activities on a premises primarily used to make retail sales is not engaged in manufacturing at that premises and cannot claim this exemption for items used at that premises.

(2) The following are “premises primarily used to make retail sales”:

1. Restaurants.
2. Mobile food vendors, vehicles, trailers, and other facilities used for retail sales.
3. Retail bakeries.
4. Prepared food retailers establishments.
5. Bars and taverns.
6. Racing and gaming establishments.
7. Racetracks.
8. Casinos.
9. Gas stations.
10. Convenience stores.
11. Hardware and home improvement stores.
12. Grocery stores.
13. Paint or paint supply stores.
14. Floral shops.
15. Other retail stores.

c. Rebuttable presumption. In addition to the premises listed in paragraph 230.15(5) “b,” premises shall be presumed to be “primarily used to make retail sales” when more than 50 percent of the gross sales of a business and its affiliates attributable to the premises are retail sales sourced to the premises under Iowa Code section 423.15(1) “a.”

(1) For purposes of paragraph 230.15(5) “c”:

“*Attributable to the premises*” means sales of tangible personal property at the premises or shipped from the premises to another location for sale or eventual sale.

“*Premises*” means any contiguous parcels, as defined in Iowa Code section 426C.1, which are owned, leased, rented, or occupied by a business or its affiliates and are operated by that business or its affiliates for a common business purpose. A “common business purpose” means the participation in any stage of manufacturing, production, or sale of a product. Whether a business is operating for a common business purpose is a fact-based determination that will depend on the individual circumstances at issue.

(2) Calculation. If a business seeking to claim this exemption makes retail sales sourced to a premises under Iowa Code section 423.15(1) “a” and the location is not one of those listed in paragraph 230.15(5) “b,” the business shall determine whether specific premises are primarily used to make retail sales by determining the amount of retail sales sourced to the premises under Iowa Code section 423.15(1) “a” during the 12-month period after the date the tangible personal property claimed to be exempt is used at the premises. The calculation should be done as follows:

Retail sales sourced to the premises

Gross sales attributable to the premises

REVENUE DEPARTMENT[701](cont'd)

If the result is less than or equal to 0.5 (or 50 percent), the premises are not primarily used to make retail sales. If the result is greater than 0.5, the premises are primarily used to make retail sales.

EXAMPLE 1: Company A owns a centralized facility where it makes widgets and distributes them to several of its own retail stores for retail sale. The retail stores are not contiguous to the centralized facility. Company A purchases a widget maker for its centralized facility and seeks to claim this exemption. Because the widgets sold are sold at the retail stores, the sales of those widgets are sourced to the retail stores where the sales occur. Therefore, none of the sales are retail sales sourced to the centralized facility. Because Company A does not make retail sales sourced to the centralized facility, the centralized facility is not primarily used to make retail sales.

EXAMPLE 2A: Company A makes widgets at its premises in Iowa, known as Location 1. Company A sells its widgets to retailers for resale and also makes some retail sales that are sourced to Location 1.

Twelve months ago, Company A purchased and put into use at Location 1 a new molding machine for making new widgets. Company A paid tax on the sales price of the molding machine at the time of purchase. During the 12-month period after Company A first used the molding machine, 2 percent of the gross sales attributable to Location 1 were from retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to retailers.

Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was first used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales. Therefore, if Company A's use of the molding machine satisfies all other requirements of the exemption, Company A's activities occurring on the premises constitute manufacturing.

EXAMPLE 2B: Same facts as in Example 2A, except that Company A also owns a second, noncontiguous premises in Iowa, known as Location 2. At Location 2, Company A operates a factory that makes the same types of widgets as Location 1. Company A also makes substantial retail sales that are sourced to Location 2.

Twelve months ago, Company A purchased new molding machines for Location 1 and Location 2. Company A paid tax on the sales price of the molding machines. During this 12-month period, 2 percent of the gross sales attributable to Location 1 were retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to distributors. Also during this 12-month period, 60 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2 and 40 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

With respect to Location 1, the outcome is the same as in Example 1A. Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales.

However, Location 2 is presumed to be primarily used to make retail sales because more than half of the gross sales attributable to Location 2 are from retail sales sourced to Location 2.

EXAMPLE 2C: Same facts as in Example 2B. Company A decides to purchase new molding machines for both Location 1 and Location 2. Relying on the exemption determinations for the prior year, Company A pays sales tax on the purchase price of the molding machine for Location 2 but tenders an exemption certificate for the purchase of the molding machine for Location 1 and does not pay sales tax on that transaction.

Twelve months pass since the new molding machines were used at their respective locations. At Location 1, the gross sales attributable to the premises and retail sales sourced to the premises remained the same. However, at Location 2, Company A experienced a decrease in on-site retail sales and an increase in distribution sales. Because of a shift in sales, 45 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2, and 55 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

Therefore, this year, Location 2 is no longer presumed to be primarily used to make retail sales because in the 12 months after the machine was used at Location 2, less than half of the gross sales attributable to Location 2 were from retail sales sourced to Location 2.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 3A: Company A owns a premises on which it makes baseball bats. A portion of the premises is leased to Company B, which operates a retail store on the premises that sells clothing and is not commonly understood to be a manufacturer. Company A and Company B are unaffiliated entities.

Company A is seeking to purchase several new lathes to use in its bat production. In the last year, 95 percent of Company A's gross sales attributable to the premises came from selling bats to distributors, and 5 percent of Company A's gross sales attributable to the premises were from retail sales at a small on-site location. Also in the last year, 100 percent of Company B's gross sales attributable to the premises were from on-site retail sales.

Because Company A and Company B are not affiliated in any way, none of Company B's sales are attributable to Company A. Therefore, for purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3B: Same facts as in Example 3A, except that Company B is an affiliate of Company A.

The result is the same; while Company B is an affiliate of Company A, the premises are not being operated for a common business purpose because Company B is not selling any of the bats manufactured by Company A. Therefore, none of Company B's business is attributable to Company A. For purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3C: Same facts as in Example 3A, except that Company B is an affiliate of Company A and instead of operating a clothing store, Company B operates a sporting goods store where it sells some of the bats manufactured by Company A.

In this case, Company B's sales are attributable to Company A because both companies use the premises for a common business purpose: the sale of baseball bats manufactured by Company A. Therefore, the gross sales attributable to the premises of both Company A and Company B must be included in Company A's gross sales attributable to the premises. The premises will be presumed to be primarily used to make retail sales if the combined retail sales by Company A and Company B that are sourced to the premises exceed 50 percent of the gross sales attributable to the premises.

ARC 4110C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rule making related to future ready Iowa registered apprenticeship development fund

The Economic Development Authority hereby adopts new Chapter 13, “Future Ready Iowa Registered Apprenticeship Development Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, House File 2458.

Purpose and Summary

2018 Iowa Acts, House File 2458, creates the Future Ready Iowa Act to strengthen workforce development. One of the programs created within this Act is the Future Ready Iowa Registered Apprenticeship Development Fund. The stated purpose of the program is to provide financial assistance to incentivize small and medium-sized apprenticeship sponsors to establish new or additional apprenticeable occupations in the apprenticeship sponsor’s apprenticeship program in order to support the growth of apprenticeship programs and expand high-quality work-based learning experiences in high-demand fields and careers for persons who are employed in eligible apprenticeable occupations in Iowa.

The adopted rules contain a purpose statement, definitions, a program description, eligibility and application requirements, application review and scoring criteria, and a requirement that an agreement be signed for receipt of financial assistance.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 18, 2018, as **ARC 3897C**. One comment was made regarding the language in proposed subrule 13.4(3) stating that “The director will make final funding decisions after considering the recommendations of staff.” The commenter was concerned that this would allow the Director to make decisions without considering the staff scoring. However, it was explained to the commenter that this language is necessary because the staff is not able to make final decisions. After receiving an explanation of the scoring and Director review process, which is used for several other programs under rules which mimic the quoted language above, the commenter did not appear to have any continued concerns. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Economic Development Authority Board on September 21, 2018.

Fiscal Impact

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Jobs Impact

After analysis and review of this rule making, the Authority has determined that this rule making will positively impact jobs in the state of Iowa by implementing the administration of a program designed to support apprentices and businesses in high-demand jobs.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 12, 2018.

The following rule-making action is adopted:

Adopt the following **new** 261—Chapter 13:

CHAPTER 13

FUTURE READY IOWA REGISTERED APPRENTICESHIP DEVELOPMENT FUND

261—13.1(15,87GA,HF2458) Purpose. Pursuant to 2018 Iowa Acts, House File 2458, and Iowa Code section 15.106A, the authority is directed to establish a future ready Iowa registered apprenticeship development fund for the purpose of providing financial assistance to incentivize small and medium-sized apprenticeship sponsors to establish new or additional eligible apprenticeable occupations in the apprenticeship sponsor's apprenticeship program in order to support the growth of apprenticeship programs and expand high-quality work-based learning experiences in high-demand fields and careers for persons who are employed in eligible apprenticeable occupations in Iowa.

261—13.2(15,87GA,HF2458) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Agreement" means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

"Applicant" means a new or existing apprenticeship sponsor located in Iowa that has established an apprenticeship program involving an eligible apprenticeable occupation that is located in Iowa and approved by the United States Department of Labor, Office of Apprenticeship.

"Apprentice" means a person who is at least 16 years of age, except where a higher minimum age is required by law, who is employed in an apprenticeable occupation, and is registered in Iowa with the United States Department of Labor, Office of Apprenticeship.

"Apprenticeable occupation" means an occupation approved for apprenticeship by the United States Department of Labor, Office of Apprenticeship.

"Apprenticeship program" means a program registered with the United States Department of Labor, Office of Apprenticeship, which includes terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including the requirement for a written apprenticeship agreement.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“*Apprenticeship sponsor*” means an entity operating an apprenticeship program or an entity in whose name an apprenticeship program is being operated, which is registered with or approved by the United States Department of Labor, Office of Apprenticeship.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Director*” means the director of the authority.

“*Eligible apprenticeable occupation*” means an apprenticeable occupation identified by the workforce development board or a community college pursuant to Iowa Code section 84A.1B as amended by 2018 Iowa Acts, House File 2458, as a high-demand job, after consultation with the authority.

“*Financial assistance*” means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of a reimbursement grant to support the costs associated with establishing a new eligible apprenticeable occupation or an additional eligible apprenticeable occupation in an applicant’s apprenticeship program.

“*Program*” means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

261—13.3(15,87GA,HF2458) Program description.

13.3(1) Amount, form, and timing of assistance.

a. The program provides financial assistance in the form of reimbursement grants to support the costs associated with establishing a registered apprenticeship program or adding additional apprenticeable occupations to an applicant’s registered apprenticeship program.

b. The maximum grant per applicant per year shall not exceed 50 percent of the apprenticeable occupation budget. The maximum amount awarded to an applicant for any one application per fiscal year shall not exceed \$25,000. The aggregate maximum amount that may be awarded to any one applicant per fiscal year for an aggregate number of applications shall not exceed \$50,000.

c. The applicant will apply for grant funding based on activities during the calendar year prior to the application period.

13.3(2) Application.

a. *Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority or by visiting the authority’s website:

Iowa Economic Development Authority
200 East Grand Avenue, Des Moines, Iowa 50309
(515)348-6200
iowaeconomicdevelopment.com

b. *Application requirements.* The application shall require any information reasonably required by the authority to determine eligibility and to make award determinations. The application submitted by the applicant should reflect program information from the calendar year prior to the application period.

c. *Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted between January 1 and February 1 of each calendar year following the start of the fiscal year. The authority may adjust these dates under extenuating circumstances and will notify affected parties. The authority may add a funding window if available funds are not exhausted during the initial submission window and will publish such application dates on the authority’s website.

d. *Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided to the authority.

13.3(3) Application review and scoring. The authority will review applications in the order they are received. Authority staff will review and score applications in accordance with rule 261—13.4(15,87GA,HF2458) and make funding recommendations to the director. If the amount of funding requested by eligible applicants exceeds the amount of funding available to the authority in any

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

given fiscal year, authority staff will make recommendations to the director as to allocation of available funding. The authority may deny applications for incompleteness or because of insufficient funds.

261—13.4(15,87GA,HF2458) Program eligibility, application scoring, and awards.**13.4(1) Program eligibility.**

a. To be considered for an award under this program, an apprenticeship program sponsor must meet the following eligibility requirements:

(1) The apprenticeship sponsor established a new eligible apprenticeable occupation or added an eligible apprenticeable occupation to the apprenticeship sponsor's existing apprenticeship program in the calendar year prior to the application period.

(2) Twenty or fewer apprentices are registered in the existing apprenticeship program as of December 31 of the calendar year prior to the date the authority receives the apprenticeship sponsor's application.

(3) More than 70 percent of the applicant's apprentices are residents of Iowa, and the remainder of the applicant's apprentices are residents of states contiguous to Iowa. In determining the number of apprentices in an applicant's apprenticeship program, the authority may calculate the average number of apprentices in the program within the most recent two-year period.

b. An apprenticeship sponsor receiving financial assistance under Iowa Code chapter 15B is ineligible for financial assistance under this chapter during the same fiscal year.

13.4(2) Application scoring criteria. Applications for financial assistance under the program shall be reviewed and scored as described below. To be considered eligible for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules. If an applicant does not meet all eligibility requirements, the application will not be scored.

a. Budget and costs. The extent to which the applicant's budget and estimated or real program costs are based on industry standards for the eligible occupation. (maximum 30 points)

b. Application of financial assistance. The applicant has provided specific details regarding the use of funding and how it will be applied. (maximum 30 points)

c. Local support. The applicant has provided documentation of local support from area partners, such as schools, local government entities, and other employers that may benefit from the apprenticeship program. (maximum 10 points)

d. Additional funding. The authority will take into consideration sources of funding for establishing an apprenticeable occupation. Scores will be based on whether the source of funding is public or private, whether the funding is repayable, and the proportion of internal funding to funding from other sources. Higher scores will be awarded if the source of funding is a private entity, if the funding is repayable, and if the amount of internal funding is more than 50 percent of funding needed to establish the apprenticeable occupation. (maximum 10 points)

e. Certification of worker safety. The applicant has not violated state or federal statutes, rules or regulations, including environmental and worker safety regulations, or if such violations have occurred, the violations have been addressed and mitigated. (maximum 10 points)

f. Certification of employment at an Iowa work site. The applicant has certified that the apprentices identified by their U.S. Department of Labor identification numbers and represented in the application are registered with the applying sponsor or lead sponsor's registered apprenticeship program and that each apprentice listed worked some time in Iowa during the prior calendar year. (maximum 10 points)

13.4(3) Financial assistance awards. The director will make final funding decisions after considering the recommendations of staff. Successful applicants will be notified in writing of an award of financial assistance, including the conditions and terms of approval.

a. Disbursement of funds. The authority will disburse funds to a successful applicant only after approval of a completed application and execution of an agreement between the applicant and the authority pursuant to this chapter. Prior to disbursement of funds, the applicant must provide the authority with confirmation of expenses detailed in the applicant's budget and the authority must confirm that all terms for financial assistance have been met.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

b. Form of financial assistance. The authority will provide financial assistance in the form of a grant to the applicant. The amount of the grant and any other terms shall be included in the agreement required pursuant to this chapter.

c. Use of funds. An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

261—13.5(15,87GA,HF2458) Agreement required.

13.5(1) Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish the terms on which the financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

13.5(2) The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

13.5(3) The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

These rules are intended to implement 2018 Iowa Acts, House File 2458.

[Filed 10/12/18, effective 12/12/18]

[Published 11/7/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4111C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to developmental disabilities

The Human Services Department hereby amends Chapter 38, "Developmental Disabilities Basic State Grant," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 225C.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 225C.6 and 42 U.S.C. Chapter 144.

Purpose and Summary

These amendments to Chapter 38 are the result of a general review of administrative rules to make necessary updates and to simplify the content wherever possible. The amendments update references to the federal authorizing legislation, remove prescriptive language that mirrors the federal legislation and replace it with references to the legislation, bring contracting language into conformity with the Iowa Code and Iowa administrative rules, and update the name of the Iowa Developmental Disabilities Council (DD Council).

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 July 18, 2018, as **ARC 3900C**. The Department received no comments during the public comment period. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Mental Health and Disability Services Commission on September 20, 2018.

Fiscal Impact

No additional costs to the regulated community or the State of Iowa as a whole are anticipated. DD Council staff has reviewed the changes and agreed that this rule making will not affect the operation or responsibilities of the DD Council. The DD Council's constituents and the general public are not expected to experience any changes.

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 the Department's general rule on exceptions to policy at 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 December 12, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend **441—Chapter 38**, chapter preamble, as follows:

PREAMBLE

Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, ~~42 U.S. Code, Section 6000, et seq.~~ 42 U.S.C. Chapter 144, (DD Act) and Iowa Code section 225C.3, the department of human services has been designated as the administering agency to receive the federal assistance to the state developmental disabilities councils from the federal ~~administration on developmental disabilities~~ Administration for Community Living. These funds are used by the ~~governor's Iowa~~ governor's Iowa developmental disabilities council.

The purpose of this chapter is to define and structure the funding of projects by the ~~governor's Iowa~~ governor's Iowa developmental disabilities council (also known as the ~~governor's Iowa~~ governor's Iowa DD council). Projects are designed to influence change in the system of services and supports in Iowa to increase the independence, productivity, and community integration of ~~people~~ individuals with developmental disabilities.

Funding priorities for projects are established by the ~~governor's Iowa~~ governor's Iowa DD council in the state plan.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend rule **441—38.1(225C,217)**, definitions of “Governor’s DD council” and “Projects,” as follows:

“Governor’s Iowa DD council” means the governor’s Iowa developmental disabilities council.

“Projects” means activities described in the Iowa DD council’s five-year plan that are designed to address the priority areas as established in purpose and priorities established by the DD Act through any of the following: to undertake advocacy, capacity-building, and systemic-change activities that contribute to a coordinated, person- and family-centered, and individual- and family-directed comprehensive system of community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families.

1.—~~Activities to increase the capacities and resources of public and private nonprofit entities and others to develop a system for providing specialized services or special adaptations of generic services or other assistance which responds to the needs and capabilities of people with developmental disabilities and their families and to enhance coordination among entities.~~

2.—~~The conducting of studies and analyses; gathering of information; development of model policies and procedures; and presentation of information, models, findings, conclusions and recommendations to federal, state and local policymakers, in order to enhance opportunities for people with developmental disabilities, including the enhancement of a system for providing or making available specialized services or special adaptations of generic services for people with developmental disabilities and their families.~~

3.—~~The demonstration of new ways to enhance the independence, productivity and integration into the community of people with developmental disabilities, such as model demonstrations which, if successful, will be made generally applicable through sources of funding other than funding under the DD Act, including new ways to enhance specialized services or special adaptations of generic services for people with developmental disabilities and their families.~~

4.—~~Outreach activities for people with developmental disabilities to enable them to obtain assistance in the priority areas established in the state plan, including access to specialized services or special adaptations of generic services for people with developmental disabilities and their families.~~

5.—~~Training for people with developmental disabilities, their family members, and personnel, including professionals, paraprofessionals, students and volunteers on obtaining access to, or on providing, services and other assistance in the area, including specialized services or special adaptations of generic services for people with developmental disabilities and their families.~~

6.—~~Similar activities designed to prevent developmental disabilities from occurring or to expand and enhance the independence, productivity and integration into the community of people with developmental disabilities through the state on a comprehensive basis.~~

ITEM 3. Amend rule 441—38.2(225C,217) as follows:

441—38.2(225C,217) Program eligibility. For any year in which Congress appropriates funds, the governor’s Iowa DD council shall, consistent with the state plan and the priorities established under the DD Act, determine projects to fund under the developmental disabilities basic state grant program. Funding priorities will be established by the governor’s Iowa DD council in the state plan and will be consistent with the priorities established in the DD Act. (Applications for capital expenditures or capital renovations are not eligible for funding.) The governor’s Iowa DD council may award funding through any of the following department-approved processes: for competitive, sole source, or unsolicited proposals in accordance with the provisions of 11—Chapter 117 for the procurement of goods and services of general use.

ITEM 4. Rescind rules **441—38.3(225C,217)** to **441—38.8(225C,217)**.

ITEM 5. Renumber rule **441—38.9(225C,217)** as **441—38.3(225C,217)**.

ITEM 6. Amend renumbered rule 441—38.3(225C,217) as follows:

441—38.3(225C,217) Contracts. ~~The funds for approved projects will be awarded through a contract entered into by the director and the applicant. The work statement of the contract and the budget will~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~be mutually negotiated between the director or designee and the applicant. The contract may cover a period not to exceed 24 months. The contract shall set forth the expectations and terms of compliance between the contractor and the director. The Iowa DD council may award funding through any of the department-approved processes for competitive or noncompetitive procurements in accordance with the provisions of 11—Chapter 117 for the procurement of goods and services of general use and 11—Chapter 118 for purchasing standards for service contracts.~~

ITEM 7. Rescind rule ~~441—38.11(225C,217)~~.

ITEM 8. Renumber rule ~~441—38.12(225C,217)~~ as ~~441—38.4(225C,217)~~.

ITEM 9. Amend renumbered rule ~~441—38.4(225C,217)~~ as follows:

~~**441—38.4(225C,217) Conflict of interest policy.** All ~~governor's Iowa~~ DD council members and those serving in an advisory capacity to the ~~governor's Iowa~~ DD council as defined in ~~441—subparagraph 1.7(8)“c”(2)~~ shall not engage in activities that present a conflict of interest.~~

~~**38.4(1)** ~~Governor's Iowa~~ DD council members and those serving in an advisory role to the ~~governor's Iowa~~ DD council are prohibited from applying for any project when they were involved in recommending the project, or designing or developing the request for proposal.~~

~~**38.4(2)** All ~~governor's Iowa~~ DD council members and those serving in an advisory capacity to the ~~governor's Iowa~~ DD council who serve or whose family members serve as officers, directors, partners, consultants, or employees of the applicant being evaluated shall be excluded from preliminary review of proposals, discussing with ~~governor's Iowa~~ DD council members who will be voting, and advising or voting on the evaluation of that applicant and all other applicants submitting proposals in that category.~~

[Filed 10/8/18, effective 12/12/18]

[Published 11/7/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4112C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to child and medical support

The Human Services Department hereby amends Chapter 98, “Support Enforcement 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 chapters 252D and 252E and 45 CFR §303.31.

Purpose and Summary

These amendments conform Division I of Chapter 98 and rule 441—98.39(252D,252E) with recent changes to 45 CFR §303.31 (Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule, effective January 19, 2017) and Iowa Code chapter 252E. The Final Rule and statutory changes require consideration of public and private health care coverage when determining medical support. The majority of these amendments update language in the rules to match the recently changed language in Iowa Code chapter 252E.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments also amend the chapter's Division II regarding the criteria and procedures for amending the amount to be withheld from the obligor's income to pay a child support delinquency when such amount is based on the hardship criterion. The amendments expand the time frame when an obligor may request an amendment of the amount to be withheld from the obligor's income due to hardship, allow the Child Support Recovery Unit (CSRU) to periodically review the amount withheld as payment toward a delinquency when such amount was granted on the grounds of hardship, increase the minimum amended amount to be withheld from \$5 to \$15, and clarify that the hardship criterion may only be applied to cases where only a delinquency is due.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3972C**. The Department received no comments during the public comment period. 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 10, 2018.

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 February 15, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 441—98.1(252E) as follows:

441—98.1(252E) Definitions.

“Medical support” means either the provision of a health benefit plan, including a group or employment related or an individual health benefit plan, or a health benefit plan provided pursuant to Iowa Code chapter 514E to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, care coverage or the payment to the obligee of a monetary amount in lieu of a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid of cash medical support. Medical support is not alimony.

“Obligee” means a custodial parent or other natural person legally entitled to receive a support payment on behalf of a child.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Obligor*” means a ~~noncustodial~~ parent or other natural person legally responsible for the support of a dependent.

“*Reasonable in cost*” means that a health insurance is ~~employment-related or other group health insurance regardless of the service delivery mechanism.~~

ITEM 2. Amend rule 441—98.2(252E) as follows:

441—98.2(252E) Provision of services. The child support recovery unit shall provide medical support ~~enforcement~~ services to public assistance and nonpublic assistance recipients of Medicaid for whom an assignment of support is in effect and shall provide these services to nonpublic assistance recipients upon their request child support services.

98.2(1) ~~Nonpublic assistance recipients.~~

a.—Applicants for nonpublic assistance services shall be informed of the availability of medical support enforcement services at the time of application and shall be asked about their desire to receive these services on Form CS-3103-0, Application for Non-Assistance Support Enforcement Service. Applicants who do not desire medical support enforcement services at the time of application may request these services in writing at a later date by completing Form 470-2744, Nonpublic Assistance Medical Support Request.

b.—The child support recovery unit shall inform recipients of nonpublic assistance services whose application forms did not contain notice of medical support enforcement services of the availability of these services in writing on Form 470-2744 prior to establishing or enforcing medical support, and shall not provide these services unless a written request is received.

98.2(2) ~~Public assistance recipients.~~ Unless good cause has been established, recipients of Medicaid public assistance are required to cooperate with the child support recovery unit as a condition of eligibility as prescribed in rule 441—75.14(249A). This includes completing and signing Form 470-2748, Public Assistance Medical Support Request, upon request of the child support recovery unit.

ITEM 3. Rescind and reserve rule **441—98.3(252E)**.

ITEM 4. Rescind and reserve rule **441—98.4(252E)**.

ITEM 5. Amend subrule 98.5(1) as follows:

98.5(1) *Information from an employer.* The unit shall gather information concerning a health benefit plan an employer may offer an obligor as follows:

a. The unit shall ~~may~~ send Form ~~470-0177~~ 470-0177M, Employment and Health Insurance Questionnaire, or Form 470-2240, Employer Health Insurance Questionnaire, whenever a potential employer is identified.

b. The unit shall secure ~~medical support~~ information about health care coverage from a known employer on Form 470-2743, Employer Medical Support Information, when Form 470-3818, National Medical Support Notice, or an order has been forwarded to the employer pursuant to Iowa Code section 252E.4.

ITEM 6. Amend subrule 98.5(3) as follows:

98.5(3) *Disposition of information.* The unit shall provide the information:

a. To the Medicaid agency and to the obligee, when requested, when the dependent is a recipient of Medicaid.

b. To the obligee, when requested, when the dependent is not a recipient of Medicaid.

ITEM 7. Amend subrule 98.7(2) as follows:

98.7(2) *Health benefit plan or insurance care coverage.*

a. If an obligor was ordered to provide a health ~~benefit plan or insurance~~ care coverage under an order, but did not comply with the order, the child support recovery unit may implement the order by forwarding to the employer a copy of the order, an ex parte order as provided in Iowa Code section 252E.4, or Form 470-3818, National Medical Support Notice.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. No change.

ITEM 8. Amend subrule 98.7(3) as follows:

98.7(3) Termination of employment. When the child support recovery unit receives information indicating the obligor's employment has terminated, the unit shall secure the status of the health benefit plan by sending Form 470-3218, Employer Insurance Notification, to the employer.

If no response is received within 30 days of sending Form 470-3218, the unit shall send a second request on Form 470-3219, Employer Insurance Second Notification, to the employer. ~~If the obligor does not notify the unit, or no response is received from the employer within 90 days of sending Form 470-3218, the unit shall notify the obligee that the health benefit plan may have terminated.~~

ITEM 9. Amend subrule 98.8(2) as follows:

98.8(2) Informal conference.

a. The obligor shall be entitled to only one informal conference for each new employer to which the unit has forwarded Form 470-3818, National Medical Support Notice, or order under Iowa Code section 252E.4 to enforce medical support.

b. No change.

c. The issues to be reviewed at the conference shall be as follows:

- (1) No change.
- (2) Whether the obligor is already providing health ~~benefit plan care~~ coverage for the dependent.
- (3) Whether the availability of dependent health care coverage ~~under a health benefit plan~~ is in error.
- (4) Whether the obligor was ordered to provide a health ~~benefit plan care~~ coverage under the support order.

d. The results in an informal conference shall in no way affect the right of the obligor to file a motion to quash the order under Iowa Code section ~~252E.4~~ 252E.6A.

ITEM 10. Amend rule 441—98.24(252D) as follows:

441—98.24(252D) Amount of withholding. The child support recovery unit shall determine the amount to be withheld by the employer or other income providers as follows:

98.24(1) Current support obligation exists. When a current support obligation exists, the amount withheld shall be an amount equal to the current support obligation, and an additional amount equal to ~~50~~ 20 percent of the current support obligation to be applied toward the liquidation of any delinquency. However, the amount withheld to be applied toward the liquidation of any delinquency shall be 50 percent of the current support obligation for any support order entered or modified prior to July 1, 1998, and for which an income withholding order has been filed by the Iowa child support recovery unit prior to July 1, 1998.

~~Effective July 1, 1998, the amount withheld to be applied toward the liquidation of any delinquency shall be 20 percent of the current support obligation for any support order entered or modified on or after July 1, 1998, or for any support order entered or modified prior to July 1, 1998, for which no income withholding order has been filed by an Iowa CSRU prior to July 1, 1998.~~

~~a.—The obligor may request a modification of the amount withheld as payment toward the arrearage or reimbursement on the grounds of hardship. The procedure for this request is described in rule 98.43(252D). Hardship exists if the obligor's income is 200 percent or less than poverty level for one person as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.~~

~~b.—If hardship is claimed by the obligor, the child support recovery unit may verify income from:~~

- ~~(1) The employer or other income provider of the obligor.~~
- ~~(2) The obligor.~~
- ~~(3) The state employment security agency.~~
- ~~(4) Other records available in accordance with Iowa Code section 252B.9.~~

~~c.—If the hardship criteria are met, the amount withheld as payment toward the arrears may be modified as follows:~~

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~~(1) The obligor's gross yearly income shall be divided by 200 percent of the established yearly gross poverty level income for one person. That amount shall be multiplied by .5. The resulting figure will be the percent of the current support order which shall be withheld for payment on the arrearage.~~

~~(2) The amount withheld on the arrearage shall not be less than \$5 per month.~~

~~(3) If criteria for withholding 20 percent toward liquidation of any delinquency are also met, the lesser of 20 percent or hardship is to be withheld.~~

98.24(2) Current obligation ended. When the current support obligation has ended or has been suspended, the income withholding order shall remain in effect until any delinquency has been satisfied. The amount withheld shall be equal to the amount of the most recent prior current support obligation which is greater than zero. ~~Hardship criteria shall be applied in accordance with subrule 98.24(1).~~ However, in the following circumstances, the amount withheld shall be 20 percent of the amount owed for current support at the time the obligation ended or was suspended; ~~and, if hardship criteria are met, this amount shall be one half of the amount established under the guidelines in subrule 98.24(1):~~

a. to d. No change.

98.24(3) No support ordered. When there is no current child support ordered and the obligation is solely the result of a judgment which does not specify a repayment schedule, the unit shall establish the amount to be withheld per month as follows:

a. Initially the withholding amount shall be set at the amount for one person from the ADC FIP schedule of basic needs. ~~Hardship may be asserted as set out in subrule 98.24(1).~~

b. ~~If hardship criteria are met in these circumstances, the amount withheld on reimbursement shall be determined by dividing the obligor's gross yearly income by 200 percent of the poverty level income for one person. The resulting number is the percent of the existing withholding amount that will now be withheld. This amount will be reduced by one half if the obligor has legal custody of the child.~~

98.24(4) No change.

~~**98.24(5) Disability continues.** If hardship criteria under paragraph 98.43(2) "e" are met and the amount withheld as payment toward the arrears is modified, the obligor is deemed to continue to meet the hardship criteria for the duration of the social security disability benefits or supplemental security income disability benefits. If those benefits have not ended, but the amount to withhold would otherwise be amended under this rule and under rule 441—98.45(252D), the unit shall determine the amount to withhold for payment toward arrears under this rule by using the same percent as was used when the hardship amount was first determined under paragraph 98.43(2) "e," but the amount shall not be less than \$5 per month.~~

ITEM 11. Adopt the following new rule 441—98.25(252D):

441—98.25(252D) Amendment of amount of withholding due to hardship.

98.25(1) Request for amendment. If subrule 98.24(2) or 98.24(3) applies, the obligor may request at any time an amendment of the amount withheld as payment toward the delinquency or reimbursement on the grounds of hardship. The obligor must submit the request in writing to the child support recovery unit.

98.25(2) Hardship criterion. Hardship exists if the obligor's income is equal to or less than 200 percent of the poverty level for one person according to the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

a. If hardship is claimed by the obligor, the child support recovery unit may verify income from:

- (1) The employer or other income provider of the obligor.
- (2) The obligor.
- (3) The state employment security agency.
- (4) Other records available in accordance with Iowa Code section 252B.9.

b. If the hardship criterion is met, the amount withheld as payment toward the delinquency may be amended as follows:

(1) The obligor's gross yearly income shall be divided by 200 percent of the established yearly gross poverty level income for one person. That amount shall be multiplied by .5. The resulting figure

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shall be multiplied by the most recent prior current support obligation or the amount determined pursuant to subrule 98.24(3), as applicable, to determine the amended amount. Notwithstanding this calculation, the amended amount shall not be less than \$15 per month.

(2) If criteria for withholding 20 percent toward liquidation of any delinquency are also met, the lesser of 20 percent or the amended amount determined in subparagraph 98.25(2) “b”(1) is to be withheld.

98.25(3) *Hardship period.* If the hardship criterion in subrule 98.25(2) is met, the child support recovery unit will grant the amended amount of withholding for a period of two years, subject to the provisions of subrule 98.25(6). However, if the obligor is receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits, the obligor is deemed to continue to meet the hardship criterion for the duration of those benefits.

98.25(4) *Denying requests.* A hardship request may be denied if:

- a. The criterion in subrule 98.25(2) is not met.
- b. The obligor has been granted an amended amount of withholding based on this rule within the last two years and that hardship period will not expire in less than 30 days.
- c. The obligor’s previous hardship period expired within the last six months and, within 30 days prior to the expiration date of the previous hardship period, the obligor did not submit the following to the child support recovery unit:

- (1) A written request for hardship; or
- (2) Verification of the obligor’s income, and the child support recovery unit was not able to verify the obligor’s income as described in paragraph 98.25(2) “a.”

98.25(5) *Notice requirements.* The child support recovery unit will provide written notification to the obligor of the result of the hardship request.

- a. When a hardship request is granted, the written notification will include the amended amount of withholding and the date the hardship period will expire.
- b. When a hardship request is denied, the written notification will include the reason for denial.

98.25(6) *Termination of hardship prior to expiration date.* The hardship period will automatically end, regardless of expiration date, if any of the following occurs:

- a. A current support obligation is added to the support order.
- b. The current support obligation was previously suspended and is reinstated.
- c. The delinquency has been paid in full.
- d. The obligor was receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits at the time the hardship request was granted, and the child support recovery unit has verified that the obligor is no longer receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits.

ITEM 12. Adopt the following **new** rule 441—98.26(252D):

441—98.26(252D) Additional information about hardship. The child support recovery unit shall make reasonable efforts within 13 months after January 1, 2019, to identify and incrementally notify obligors who may be impacted by the changes to hardship procedures in rule 441—98.25(252D).

ITEM 13. Adopt the following **new** implementation sentence for **441—Chapter 98, Division II, Part A:**

These rules are intended to implement Iowa Code chapter 252D.

ITEM 14. Amend subrule 98.32(1) as follows:

98.32(1) *Good cause exists.* Good cause is found to exist by the court or the child support recovery unit. For purposes of this rule, “good cause” is defined as the posting of a secured bond by the obligor sufficient to pay all current and future child support obligations, including any ~~arrears~~ delinquency which may accrue.

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ITEM 15. Rescind and reserve rule **441—98.35(252D)**.

ITEM 16. Amend rule 441—98.39(252D,252E) as follows:

441—98.39(252D,252E) Provisions for medical support. An income withholding order or notice of income withholding may also include provisions for enforcement of medical support when medical support is included in the support order. The income withholding order or notice of income withholding may require implementation of dependent ~~coverage under a health benefit plan~~ care coverage pursuant to Iowa Code chapter 252E or the withholding of a dollar amount for medical support. Amounts withheld for medical support shall be determined in the same manner as amounts withheld for child support.

ITEM 17. Amend subrule 98.40(2) as follows:

98.40(2) Disposable income ~~shall mean the nonexempt income of the obligor minus lawful deductions as prescribed by 42 U.S.C. Section 662(G)~~ means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

ITEM 18. Amend rule 441—98.41(252D) as follows:

441—98.41(252D) Multiple obligations. In the event that an obligor has more than one support obligation that is being enforced by the child support recovery unit, the unit may enter an income withholding order to enforce each obligation. The amount specified to be withheld on the ~~arrears~~ delinquency under the income withholding order or notice shall be determined in accordance with rule 441—98.24(252D).

ITEM 19. Amend subrule 98.42(1) as follows:

98.42(1) Notice to employer. The unit may send notice to the employer or other income provider by regular mail or by electronic means in accordance with Iowa Code chapter 252D. If the unit is sending notice by regular mail, it shall send Form 470-3272, ~~Order/Notice to Withhold Income for Child Support~~ Income Withholding for Support, or a notice in the standard format prescribed by 42 U.S.C. §666(b)(6)(A). If the unit is sending the notice by electronic means, it may include notice of more than one obligor's order and need only state once provisions which are applicable to all obligors, such as the information in paragraphs 98.42(1) "d," "f," "g," and "i," of this subrule. "i." The statement of provisions applicable to all obligors may be sent by regular mail or electronic means. The notice of income withholding shall contain information such as the following:

a. to j. No change.

ITEM 20. Amend subrule 98.42(2) as follows:

98.42(2) Notice to obligor. Form 470-2624, Initiation of Income ~~Withholding~~ Withholding/Medical Support Enforcement, shall be sent to the last-known address of the obligor by regular mail. The notice shall contain the following information:

a. to f. No change.

ITEM 21. Amend subrule 98.42(3) as follows:

98.42(3) Standard format. As provided in Iowa Code section 252D.17 ~~as amended by 1997 Iowa Acts, House File 612, section 61,~~ an order or notice of an order for income withholding shall be in a standard format prescribed by the child support recovery unit. Form 470-3272, ~~Order/Notice to Withhold Income for Child Support~~ Income Withholding for Support, is the standard format prescribed by the child support recovery unit, and the unit shall make a copy of the form available to the state court administrator and the Iowa state bar association.

ITEM 22. Amend subrule 98.43(2) as follows:

98.43(2) Informal conference.

a. No change.

b. Procedures for the informal conference are as follows:

(1) No change.

(2) The obligor may request an informal conference with the child support recovery unit if the obligor believes the withholding is in error ~~or meets the hardship criteria defined by subrule 98.24(1).~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) The obligor shall request an informal conference in writing, ~~within 15 calendar days from the date of the notice of the right to an informal conference, or at any time, if a mistake of fact regarding the identity of the obligor or the amount of the delinquency is believed to have been made.~~

(4) to (7) No change.

(8) If the child support recovery unit has not complied with ~~subrule 98.24(1) rule 441—98.24(252D)~~, it shall then adjust the income withholding amount.

c. The issues to be reviewed at the conference shall be as follows:

(1) No change.

(2) For orders or notices resulting from the existence of a delinquency, whether:

1. No change.

~~2. The hardship criteria are met.~~

~~3.~~ 2. For income withholding orders or notices issued after November 1, 1990, whether the guidelines described at rule 441—98.24(252D) were followed.

(3) No change.

d. No change.

~~e. Notwithstanding paragraph 98.43(2) “a” and subparagraph 98.43(2) “b”(3), an obligor who has been awarded social security disability benefits or supplemental security income disability benefits under the federal Social Security Act may request an informal conference in writing at any time.~~

ITEM 23. Amend subrule 98.43(3) as follows:

98.43(3) *Income withholding issued from another state.* The child support recovery unit shall follow procedures for a motion to quash or a request for hardship or conduct an informal conference based on an income withholding order or notice issued in another state only if the unit is providing services under 441—Chapter 95.

ITEM 24. Amend subrule 98.45(6) as follows:

98.45(6) *Disability ends* Implementation or termination of amended amount of withholding due to hardship. The amount required to be withheld was based on the hardship criteria on or after September 1, 2006, and the child support recovery unit has verified that the obligor is no longer receiving social security disability benefits or supplemental security income disability benefits, unless the benefits have been changed to social security retirement benefits. The child support recovery unit has determined that the withholding order should be modified based upon the hardship provisions in rule 441—98.25(252D).

ITEM 25. Amend subrule 98.46(2) as follows:

98.46(2) *Satisfaction of amount to withhold.* No refund shall be made unless amounts have been collected which fully satisfy the amount specified in the ~~mandatory~~ income withholding order or notice for the withholding period during which income has been generated.

ITEM 26. Amend subrule 98.46(3) as follows:

98.46(3) *When issued.* Any amounts received in excess of the amounts specified in the order or notice to withhold shall be issued to the obligor within 30 days of discovery by the child support recovery unit, unless the obligor requests in writing that these amounts be credited toward the ~~arrears~~ delinquency or future child support. If there is a dispute regarding whether there is an overpayment, the obligor may request an informal conference by following the procedures set out in subparagraphs 98.43(2) “a”(3) through (7). This procedure shall not preclude the obligor from utilizing other civil remedies.

ITEM 27. Rescind and reserve rule **441—98.47(252D)**.

[Filed 10/10/18, effective 2/15/19]

[Published 11/7/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4113C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to children's residential facilities**

The Human Services Department hereby amends Chapter 106, "Certification Standards for Children's Residential Facilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.6 and 2018 Iowa Acts, House File 2444.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6 and 2018 Iowa Acts, House File 2444.

Purpose and Summary

This amendment adds the requirement that an employee, operator, owner, or other person who performs duties for a children's residential facility shall make a report, in accordance with Iowa Code section 232.69, whenever that person reasonably believes a child for whom the person is providing care has suffered abuse.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3971C**. The Department received no comments during the public comment period. 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 10, 2018.

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).

HUMAN SERVICES DEPARTMENT[441](cont'd)

Effective Date

This rule making will become effective on January 1, 2019.

The following rule-making action is adopted:

Adopt the following **new** rule 441—106.19(232):

441—106.19(232) Mandatory reporting of child abuse.

106.19(1) Mandatory reporters. Any employee, operator, owner, or other person who performs duties for a children's residential facility shall make a report, in accordance with Iowa Code section 232.69, whenever that person reasonably believes a child for whom the person is providing care has suffered abuse.

106.19(2) Required training. Staff shall receive training relating to the identification and reporting of child abuse as required by Iowa Code section 232.69.

106.19(3) Training documentation. The certified children's residential facility shall develop and maintain a written record for each employee, operator, owner, or other person who performs duties for the children's residential facility in order to document the content and amount of training.

This rule is intended to implement Iowa Code section 232.69.

[Filed 10/10/18, effective 1/1/19]

[Published 11/7/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4114C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to child care record checks

The Human Services Department hereby amends Chapter 109, "Child Care Centers," Chapter 110, "Child Development Homes," and Chapter 120, "Child Care Homes," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 237A.12 and 2018 Iowa Acts, House File 2444.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237A.12; 2018 Iowa Acts, House File 2444; and 45 CFR 98.

Purpose and Summary

The Department is required by federal and state legislation to implement additional mandatory prohibitions to involvement with child care as a result of a record check. Iowa Code chapter 237A was amended by 2018 Iowa Acts, House File 2444, with an effective date of July 1, 2018. Persons convicted of specific misdemeanors and felonies will be prohibited from involvement with child care. A person will also be prohibited if the person refuses to participate in a record check evaluation or makes what the person knows to be a false statement of material fact in connection with a conviction or record check.

Persons seeking to be involved with child care may now be ineligible due to changes in prohibitions for child caretakers based on evaluation of criminal and abuse records. Parents can be assured that additional safety measures are in place through legislation to ensure children are safe in child care settings.

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These amendments also implement the requirement of additional background checks on persons involved with child care, in accordance with federal requirements. The background check results must be received prior to the person's involvement with child care; however, a waiver is currently permitted by the federal Office of Child Care under the condition that, at a minimum, fingerprint check requests are submitted to the Department of Public Safety prior to the person's involvement. A child care center currently has 30 days upon staff hire before the center must submit fingerprints to the Department of Public Safety for evaluation. The amendments require fingerprint checks to be done prior to staff involvement with child care.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3970C**. The Department received no comments during the public comment period. 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 10, 2018.

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

These amendments do not provide for a specific waiver authority because anyone may request a waiver of these provisions in a specified situation under the Department's general rule on exceptions at 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, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **109.6(6)“d”** as follows:

d. National criminal history checks. National criminal history checks based on fingerprints are required for all persons subject to record checks ~~under this subrule effective with a center's initial licensure or relicensure on or after June 1, 2010.~~ The national criminal history check shall be repeated for each person every four years and when the department or center becomes aware of any new transgressions committed by that person in another state. The department is not responsible for the cost of conducting the national criminal history check.

(1) and (2) No change.

(3) The child care center shall provide fingerprints to the department of public safety ~~no later than 30 days after the subject's approval for employment at the center~~ prior to a person's involvement with

HUMAN SERVICES DEPARTMENT[441](cont'd)

child care at the center. The center shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(4) to (8) No change.

ITEM 2. Amend paragraph **109.6(6)“e”** as follows:

e. Mandatory prohibition. A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) Founded child or dependent adult abuse that was determined to be sexual abuse.

(2) ~~Placement on the~~ A requirement to be listed on any state sex offender registry or the national sex offender registry.

(3) ~~Felony child endangerment or neglect or abandonment of a dependent person.~~ Any of the following felony convictions:

1. Child endangerment or neglect or abandonment of a dependent person.

2. Domestic abuse.

3. Crime against a child including, but not limited to, sexual exploitation of a minor.

4. Forcible felony.

5. Arson.

(4) ~~Felony domestic abuse.~~ A record of a misdemeanor conviction of a crime against a child that constitutes one of the following offenses:

1. Child abuse.

2. Child endangerment.

3. Sexual assault.

4. Child pornography.

(5) ~~Felony crime against a child including, but not limited to, sexual exploitation of a minor.~~ If a person subject to a record check refuses to consent to a record check, the person shall be prohibited from involvement with child care.

(6) ~~Foreible felony.~~ If a person has been convicted of a crime and makes what the person knows to be a false statement of material fact in connection with the conviction or record check, the person shall be prohibited from involvement with child care.

ITEM 3. Adopt the following **new** subparagraph **109.6(6)“h”(5)**:

(5) The department shall reevaluate any transgressions where a state or federal law change requires different considerations of the transgression than had been previously applied.

ITEM 4. Amend paragraph **110.11(3)“d”** as follows:

d. National criminal history record checks. Fingerprint-based checks of national criminal history records shall also be completed before a person's involvement with child care. This requirement shall be ~~effective on or after July 1, 2013,~~ for an initial application for registration or a renewal application for registration. The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or registrant becomes aware of any new transgressions committed by that person in another state. The department is responsible for the cost of conducting the national criminal history record check.

(1) to (3) No change.

ITEM 5. Amend paragraph **110.11(3)“e”** as follows:

e. Mandatory prohibition. A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) Founded child or dependent adult abuse that was determined to be sexual abuse.

(2) ~~Placement on the~~ A requirement to be listed on any state sex offender registry or the national sex offender registry.

(3) ~~Felony child endangerment or neglect or abandonment of a dependent person.~~ Any of the following felony convictions:

1. Child endangerment or neglect or abandonment of a dependent person.

2. Domestic abuse.

HUMAN SERVICES DEPARTMENT[441](cont'd)

3. Crime against a child including, but not limited to, sexual exploitation of a minor.

4. Forcible felony.

5. Arson.

(4) ~~Felony domestic abuse.~~ A record of a misdemeanor conviction of a crime against a child that constitutes one of the following offenses:

1. Child abuse.

2. Child endangerment.

3. Sexual assault.

4. Child pornography.

(5) ~~Felony crime against a child including, but not limited to, sexual exploitation of a minor.~~ If a person subject to a record check refuses to consent to a record check, the person shall be prohibited from involvement with child care.

(6) ~~Forcible felony.~~ If a person has been convicted of a crime and makes what the person knows to be a false statement of material fact in connection with the conviction or record check, the person shall be prohibited from involvement with child care.

ITEM 6. Amend subparagraph **110.11(3)“f”(1)** as follows:

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense ~~under Iowa Code chapter 124.~~

2. No change.

ITEM 7. Adopt the following **new** subparagraph **110.11(3)“h”(6)**:

(6) The department shall reevaluate any transgressions where a state or federal law change requires different considerations of the transgression than had been previously applied.

ITEM 8. Amend paragraph **120.11(3)“e”** as follows:

e. Mandatory prohibition. A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) Founded child or dependent adult abuse that was determined to be sexual abuse.

(2) ~~Placement on the~~ A requirement to be listed on any state sex offender registry or the national sex offender registry.

(3) ~~Felony child endangerment or neglect or abandonment of a dependent person.~~ Any of the following felony convictions:

1. Child endangerment or neglect or abandonment of a dependent person.

2. Domestic abuse.

3. Crime against a child including, but not limited to, sexual exploitation of a minor.

4. Forcible felony.

5. Arson.

(4) ~~Felony domestic abuse.~~ A record of a misdemeanor conviction of a crime against a child that constitutes one of the following offenses:

1. Child abuse.

2. Child endangerment.

3. Sexual assault.

4. Child pornography.

(5) ~~Felony crime against a child including, but not limited to, sexual exploitation of a minor.~~ If a person subject to a record check refuses to consent to a record check, the person shall be prohibited from involvement with child care.

(6) ~~Forcible felony.~~ If a person has been convicted of a crime and makes what the person knows to be a false statement of material fact in connection with the conviction or record check, the person shall be prohibited from involvement with child care.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 9. Amend subparagraph **120.11(3)“f”(1)** as follows:

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or ~~the~~ founded abuse report:

1. Conviction of a controlled substance offense ~~under Iowa Code chapter 124.~~
2. No change.

ITEM 10. Adopt the following new subparagraph **120.11(3)“h”(6)**:

(6) The department shall reevaluate any transgressions where a state or federal law change requires different considerations of the transgression than had been previously applied.

[Filed 10/10/18, effective 1/1/19]

[Published 11/7/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4115C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to child care assistance

The Human Services Department hereby amends Chapter 170, “Child Care Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6 and 2018 Iowa Acts, Senate File 2418.

Purpose and Summary

These amendments update the Child Care Assistance (CCA) half-day rate ceilings in accordance with 2018 Iowa Acts, Senate File 2418. Providers and families will be affected by these changes. The amendments allow providers to be paid more for the care they provide to CCA-eligible families. Families will have more and better-quality choices of CCA providers.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3969C**. The Department received no comments from the public during the public comment period; however, the Department did receive comments based on an internal review of the rule making. The internal comments detailing the necessary changes are as follows:

Comment 1: Within paragraph 170.4(3)“g,” the form that was initially identified for inclusion in the rule was determined to be incorrect. The proposed revision to paragraph “g” indicated that the form would be used for both abuse and criminal record checks. The form proposed was only appropriate for release of information regarding child abuse or dependent adult abuse, but not criminal checks. The paragraph needs to reflect that there are potentially two forms that may be required for the purpose of providing a release of information for conducting necessary background checks.

As a result of Comment 1, the introductory paragraph of 170.4(3)“g” has been further amended to read as follows:

“g. *Iowa records checks for in-home care.* If a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete

HUMAN SERVICES DEPARTMENT[441](cont'd)

and submit the required authorization form(s) to the department. The department shall use the form(s) to conduct Iowa criminal history record and child abuse record checks.”

Comment 2: Within paragraph 170.4(7)“a,” the sentence referring to the new tables needs to be modified to ensure appropriate reference to the correct rates based on provider type and age group.

As a result of Comment 2, the introductory paragraph of 170.4(7)“a” has been further amended to read as follows:

“*a. Rate of payment.* The rate of payment for child care services, except for in-home care which shall be paid in accordance with 170.4(7)“d,” shall be the actual rate charged by the provider for a private individual, not to exceed the maximum rates shown below. When a provider does not have a half-day rate in effect, a rate is established by dividing the provider’s declared full-day rate by 2. When a provider has neither a half-day nor a full-day rate, a rate is established by multiplying the provider’s declared hourly rate by 4.5. Payment shall not exceed the rate applicable to the provider type and age group as shown in the tables below. To be eligible for the special needs rate, the provider must submit documentation to the child’s service worker that the child needing services has been assessed by a qualified professional and meets the definition for ‘child with special needs,’ and a description of the child’s special needs, including, but not limited to, adaptive equipment, more careful supervision, or special staff training.”

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on October 10, 2018.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa of \$100,000 annually or \$500,000 over five years. The rate increases will result in higher payments to child care providers for the services they provide to CCA-eligible families.

Jobs Impact

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

Waivers

This amendment does not provide a specific waiver authority because families may request a waiver of these provisions in a specified situation under the Department’s general rule on exceptions at 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, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **170.4(3)“g”** as follows:

g. Iowa records checks for in-home care. If a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete and submit the required authorization form(s) to the department ~~Form 470-5143, Iowa Department of Human Services Record Check Authorization Form~~. The department shall use ~~this form~~ the form(s) to conduct Iowa criminal history record and child abuse record checks.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) to (3) No change.

ITEM 2. Amend paragraph 170.4(7)“a” as follows:

a. *Rate of payment.* The rate of payment for child care services, except for in-home care which shall be paid in accordance with 170.4(7)“d,” shall be the actual rate charged by the provider for a private individual, not to exceed the maximum rates shown below. When a provider does not have a half-day rate in effect, a rate is established by dividing the provider’s declared full-day rate by 2. When a provider has neither a half-day nor a full-day rate, a rate is established by multiplying the provider’s declared hourly rate by 4.5. Payment shall not exceed the rate applicable to the provider type and age group in Table I, except for special needs care which shall not exceed the rate applicable to the provider and age group in Table H as shown in the tables below. To be eligible for the special needs rate, the provider must submit documentation to the child’s service worker that the child needing services has been assessed by a qualified professional and meets the definition for “child with special needs,” and a description of the child’s special needs, including, but not limited to, adaptive equipment, more careful supervision, or special staff training.

Age Group	Child Care Center		Child Development Home Category A or B		Child Development Home Category C		Nonregistered Family Home
	Basic	QRS 5	Basic	QRS 5	Basic	QRS 5	
Infant and Toddler	\$16.78	\$20.50	\$12.98	\$13.75	\$12.44	\$15.00	\$8.19
Preschool	\$13.53	\$17.50	\$12.18	\$13.50	\$12.18	\$13.75	\$7.19
School Age	\$12.18	\$14.75	\$10.82	\$12.50	\$10.82	\$13.00	\$7.36

Age Group	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	\$17.00	\$51.94	\$19.75	\$51.94	\$20.50	\$51.94	\$21.90	\$51.94
Preschool	\$14.75	\$30.43	\$15.50	\$30.43	\$16.40	\$30.43	\$18.69	\$30.43
School Age	\$12.18	\$30.34	\$12.50	\$30.34	\$13.50	\$30.34	\$15.00	\$30.34

Age Group	Child Care Center	Child Development Home Category A or B	Child Development Home Category C	Nonregistered Family Home
Infant and Toddler	\$51.94	\$17.05	\$13.40	\$10.24
Preschool	\$30.43	\$15.83	\$13.40	\$ 8.99
School Age	\$30.34	\$14.61	\$12.18	\$ 9.20

HUMAN SERVICES DEPARTMENT[441](cont'd)

Table 2 Half-Day Rate Ceilings for (Child Development Home A/B)								
<u>Age Group</u>	<u>No QRS</u>		<u>QRS 1 or 2</u>		<u>QRS 3 or 4</u>		<u>QRS 5</u>	
	<u>Basic</u>	<u>Special Needs</u>	<u>Basic</u>	<u>Special Needs</u>	<u>Basic</u>	<u>Special Needs</u>	<u>Basic</u>	<u>Special Needs</u>
<u>Infant and Toddler</u>	\$12.98	\$19.47	\$13.50	\$20.25	\$13.75	\$20.63	\$14.00	\$21.00
<u>Preschool</u>	\$12.50	\$18.75	\$12.75	\$19.13	\$13.00	\$19.50	\$13.75	\$20.63
<u>School Age</u>	\$10.82	\$16.23	\$11.25	\$16.88	\$12.00	\$18.00	\$12.50	\$18.75

Table 3 Half-Day Rate Ceilings for (Child Development Home C)								
<u>Age Group</u>	<u>No QRS</u>		<u>QRS 1 or 2</u>		<u>QRS 3 or 4</u>		<u>QRS 5</u>	
	<u>Basic</u>	<u>Special Needs</u>	<u>Basic</u>	<u>Special Needs</u>	<u>Basic</u>	<u>Special Needs</u>	<u>Basic</u>	<u>Special Needs</u>
<u>Infant and Toddler</u>	\$13.00	\$19.50	\$14.00	\$21.00	\$14.50	\$21.75	\$15.00	\$22.50
<u>Preschool</u>	\$12.50	\$18.75	\$13.00	\$19.50	\$13.50	\$20.25	\$15.00	\$22.50
<u>School Age</u>	\$11.25	\$16.88	\$12.00	\$18.00	\$12.50	\$18.75	\$14.00	\$21.00

Table 4 Half-Day Rate Ceilings for Child Care Home (Not Registered)		
<u>Age Group</u>	<u>Basic</u>	<u>Special Needs</u>
<u>Infant and Toddler</u>	\$8.19	\$12.29
<u>Preschool</u>	\$7.19	\$10.79
<u>School Age</u>	\$7.36	\$11.04

The following definitions apply in the use of the rate tables:

(1) “Child care Licensed center” shall mean those providers as defined in 170.4(3) “a.” “Registered child development home A/B” or “child development home C” shall mean those providers as defined in 170.4(3) “b.” “Nonregistered family child care home (not registered)” shall mean those providers as defined in 441—Chapter 120.

(2) Under age group, “infant and toddler” shall mean age two weeks to two years; “preschool” shall mean two years to school age; “school age” shall mean a child in attendance in full-day or half-day classes.

(3) “QRS 5” shall mean a provider who has achieved a rating of Level 5 under the quality rating system. “No QRS” shall mean a provider who is not participating in the quality rating system.

(4) A provider who is rated under the quality rating system shall be paid according to the corresponding QRS payment level in the tables above only during the period the rating is valid as defined in 441—Chapter 118. If the provider’s QRS rating expires, the provider shall be paid according to the “No QRS” payment level.

(5) For a provider rated “QRS 1” through “QRS 4,” if the rating period expires before a new QRS level is approved, the provider will be paid according to the “No QRS” payment level until the new QRS level is approved.

(6) For a provider rated “QRS 5,” if a renewal application is received before the current rating period expires, the provider will continue to be paid according to the “QRS 5” payment level until a decision is made on the provider’s application.

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(7) “QRS 1 or 2” shall mean a provider who has achieved a rating of Level 1 or Level 2 under the quality rating system.

(8) “QRS 3 or 4” shall mean a provider who has achieved a rating of Level 3 or Level 4 under the quality rating system.

(9) “QRS 5” shall mean a provider who has achieved a rating of Level 5 under the quality rating system.

[Filed 10/10/18, effective 1/1/19]

[Published 11/7/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4116C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to licensure of chiropractic physicians

The Board of Chiropractic hereby amends Chapter 41, “Licensure of Chiropractic Physicians,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76, 151.11 and 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 147, 151 and 272C.

Purpose and Summary

This amendment provides clarification that if an applicant has held an active license during three of the past five years, the applicant can forgo the requirement of taking the Special Purposes Examination for Chiropractic (SPEC) to reactivate the license.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 15, 2018, as **ARC 3943C**. A public hearing was held on September 4, 2018, at 7:30 a.m. in the Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa. The Iowa Chiropractic Society attended and was in support of the amendments. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on October 10, 2018.

Fiscal Impact

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

Jobs Impact

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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Waivers

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

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 12, 2018.

The following rule-making action is adopted:

Amend subparagraph **41.14(3)“b”(3)** as follows:

(3) Verification of passing the SPEC if the applicant does not have a current license and has not ~~been in active practice~~ had an active license in the United States during three of the past five years.

[Filed 10/16/18, effective 12/12/18]

[Published 11/7/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4117C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to sales and use tax for commercial fertilizer

The Revenue Department hereby amends Chapter 17, “Exempt Sales,” Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” and Chapter 226, “Agricultural Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3.

Purpose and Summary

The Department received a petition for rule making on April 16, 2018, pursuant to Iowa Code section 17A.7 and rule 701—7.29(17A). The petitioner requested a change to rule 701—17.4(422,423) regarding an exemption from sales and use tax for sales of commercial fertilizer. The petition satisfied the requirements set forth in Iowa Code section 17A.7 and rule 701—7.29(17A). Upon review of the rule at issue, the Department agrees that a change to its rules regarding the sale of commercial fertilizer is needed.

Rule 701—17.4(422,423) is intended to implement Iowa Code section 422.42(3), which is now repealed. The Legislature amended the sales and use tax provisions of the Iowa Code, including

REVENUE DEPARTMENT[701](cont'd)

section 422.42, in 2003 to conform to the Streamlined Sales and Use Tax Agreement (Streamlined). Subsequently, the Department adopted new rules to reflect the changes brought about by the State's participation in Streamlined. Included in those new rules is rule 701—226.6(423), Commercial fertilizer and agricultural limestone, which is very similar to rule 701—17.4(422,423). The Department did not rescind or otherwise amend the pre-Streamlined rules at that time.

After considering the petitioner's suggestion to amend rule 701—17.4(422,423), the Department concluded that rescinding rule 701—17.4(422,423) and amending rule 701—226.6(423) as proposed in **ARC 3886C** is appropriate to provide accuracy in and clarity to the Department's rules.

The Department also amended subrule 18.57(1) to update a cross reference to rule 701—17.4(422,423).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 18, 2018, as **ARC 3886C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on September 12, 2018, as **ARC 4003C**. A public hearing was held on October 9, 2018, at 1 p.m. in Room 430, Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa. No one attended the public hearing.

A representative of the Iowa Agricultural Limestone Association contacted the Department with a question about the origin of this rule making and requested the public hearing. The individual expressed satisfaction with the Department's explanation. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on October 17, 2018.

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 701—7.28(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 12, 2018.

The following rule-making actions are adopted:

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Rescind and reserve rule **701—17.4(422,423)**.

ITEM 2. Amend subrule 18.57(1) as follows:

18.57(1) Sales of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, insect control, or other health promotion of flowering, ornamental, or vegetable plants to a commercial greenhouse are exempt from tax. For the purposes of this subrule a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an “insecticide” or “pesticide.” See rules ~~701—17.4(422,423)~~ 701—226.6(423) and 701—17.9(422,423) for more information regarding these exemptions.

ITEM 3. Amend rule 701—226.6(423) as follows:

701—226.6(423) Commercial fertilizer and agricultural limestone.

226.6(1) Commercial fertilizer. Sales of commercial fertilizer ~~and~~ are exempt from sales and use tax. Plant hormones are considered to be commercial fertilizer.

226.6(2) Agricultural limestone. Sales of agricultural limestone are exempt from sales and use tax only if the purchaser intends to use the ~~fertilizer or~~ limestone for the disease control, weed control, insect control, or health promotion of plants or livestock produced for market as part of agricultural production. See rule 701—211.1(423) for definitions of “agricultural production” and “plants.” ~~Plant hormones are considered to be commercial fertilizer.~~ Sales of ~~commercial fertilizer or~~ agricultural limestone used for other purposes are subject to sales tax. Examples of taxable use include, but are not limited to: ~~commercial fertilizer sold~~ sales of agricultural limestone for application on a lawn, golf course, or cemetery.

This rule is intended to implement Iowa Code subsections 423.3(4) and 423.3(5).

[Filed 10/17/18, effective 12/12/18]

[Published 11/7/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4118C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to dependent child health care coverage on tax return

The Revenue Department hereby amends Chapter 38, “Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14 and 2017 Iowa Acts, House File 625.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2017 Iowa Acts, House File 625.

Purpose and Summary

2017 Iowa Acts, House File 625, repealed Iowa Code section 422.12M, which required taxpayers to indicate whether each of a taxpayer’s dependent children had health care coverage on December 31 of the tax year on the taxpayer’s Iowa individual income tax return. This rule making rescinds and reserves the rule that implemented Iowa Code section 422.12M.

REVENUE DEPARTMENT[701](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 18, 2018, as **ARC 3888C**. 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 17, 2018.

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 701—7.28(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 12, 2018.

The following rule-making action is adopted:

Rescind and reserve rule **701—38.19(422)**.

[Filed 10/17/18, effective 12/12/18]

[Published 11/7/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4119C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to sanctions

The Department of Transportation hereby amends Chapter 615, "Sanctions," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 321.210, 321.210A, 321.210D and 321A.2.

TRANSPORTATION DEPARTMENT[761](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.177, 321.210, 321.210A, 321.210C, 321.210D, 321.218, 321.276, 321.372, 321A.2 and 321J.21; section 321.212 as amended by 2018 Iowa Acts, House File 2502, section 96; section 321.215 as amended by 2018 Iowa Acts, House File 2502, section 97; and section 321.323A as amended by 2018 Iowa Acts, House File 2304, sections 1 to 4.

Purpose and Summary

This rule making adopts amendments to Chapter 615, which addresses the Department's rules regarding driver's license sanctions. In general, the amendments update an outdated office name, contact information, form references and legal references; eliminate irrelevant and redundant language to improve clarity; remove requirements that no longer match current business practices; make corrections that update rules to statutory requirements; implement legislation that affects sanctions for violations of Iowa's "slow down, move over" law; and implement legislation that ends the practice of imposing driving sanctions for drug convictions unrelated to the operation of a motor vehicle. The amendments do not otherwise change any existing sanction or appeal processes. The following paragraphs describe the amendments in more detail.

Definitions. The amendments make changes to definitions currently included in Chapter 615. First, the amendments strike redundant language and establish a single definition for the terms "contributive accident" and "contributed to an accident." These terms are relevant to whether a person should be sanctioned as a habitually reckless or negligent driver after being involved in multiple motor vehicle accidents under Iowa Code section 321.210 and rule 761—615.12(321) or for a serious conviction after being involved in a fatal motor vehicle accident under Iowa Code section 321.210 and 761—paragraph 615.17(2)"b," or should be referred to remedial driver improvement after being involved in a motor vehicle accident as a young driver under Iowa Code section 321.180B and rule 761—615.42(321). The amendments do not change the meaning of the terms or the standards by which the sanctions are imposed, but only eliminate repeating the same definition in several places throughout the chapter.

Second, the amendments rescind the definition of the term "conviction free." As the current definition indicates, the definition is only relevant to terms used in Iowa Code section 321.180B, which governs graduated driver's licenses issued to persons aged 14 to 17. The term is not used in or relevant to any other provisions in Chapter 615, and removing the definition will have no impact on any sanction imposed under this chapter.

Periods of suspension or revocation. The amendments clarify that rule 761—615.11(321) regarding the length of time a sanction may be imposed applies both to suspensions and to revocations. The current version of this rule refers only to suspensions, but the authorizing Iowa Code sections the rule implements (Iowa Code sections 321.212 and 321.218) govern both suspensions and revocations. The words "or revocation" are added throughout the rule to accurately reflect the statute, but the sanctions or periods of sanctions otherwise imposed under this chapter do not change. The amendments also update rule 761—615.11(321) to properly reflect the content of Iowa Code section 321.218, which provides that the Department, upon receiving notice that a person has been convicted of operating a motor vehicle while the person's license is suspended or revoked, shall extend the period of suspension or revocation for an additional like period or for one year, whichever period is shorter. Although the Department has been properly implementing this part of Iowa Code section 321.218, the rule did not properly reflect that the extension should be limited to the shorter of an additional like period or one year. The amendment corrects this.

In conjunction with this change, the amendments also clarify that rule 761—615.11(321) does not apply to the extension of operating while intoxicated (OWI) sanctions, which is instead governed by rule 761—615.32(321). Rule 761—615.32(321) implements Iowa Code section 321J.21, which requires the Department to extend the period of license suspension, denial, revocation, or bar for an additional like period and which prohibits the Department from issuing a person a new license during the additional like period when the person is convicted of operating a motor vehicle while the person's license is

TRANSPORTATION DEPARTMENT[761](cont'd)

suspended, revoked, denied or barred for an OWI offense under Iowa Code chapter 321J. Iowa Code section 321J.21, unlike Iowa Code section 321.218, does not limit the extension of the additional like period to the shorter of the like period or one year, and accordingly it should remain clear that rule 761—615.32(321) separately governs extensions of sanctions for OWI offenses. Again, the Department has been correctly implementing Iowa Code section 321J.21, but the amendment will ensure that the content of the rule properly aligns to the content of Iowa Code section 321J.21.

Suspension of habitual violators. Consistent with Iowa Code section 321.276(4)“b,” which provides that convictions for use of an electronic communication device under Iowa Code section 321.276 shall not be considered a moving violation for purposes of Iowa Code chapter 321 or rules adopted under Iowa Code chapter 321, the amendments add violations of Iowa Code section 321.276 to the list of violations that shall not be used to determine whether a person should be deemed a habitual violator under Iowa Code section 321.210 and rule 716—615.13(321).

Violations of corresponding municipal ordinances. Under Iowa Code section 321.235, local authorities may adopt traffic regulations which are not in conflict with the provisions of Iowa Code chapter 321. Under this authority, many municipalities have, by ordinance, established traffic codes that include traffic regulations that correspond to traffic regulations established in Iowa Code chapter 321, and when a driver is cited in a municipality with such an ordinance, the citation and conviction are entered under the local ordinance rather than the corresponding section of Iowa Code chapter 321. Under Iowa Code section 321.491, the clerk of court is required to report to the Department all records of convictions for violations of Iowa Code chapter 321 or other laws regulating the operation of vehicles on highways, and under Iowa Code section 321.200, the Department is required to enter each conviction reported on the corresponding driver’s record and to consider each conviction when determining whether a driver is eligible for a driver’s license or should be sanctioned. Under this authority, the clerk of court reports to the Department all convictions for traffic violations, regardless of whether convictions are written under Iowa Code chapter 321 or under a corresponding municipal ordinance, and the Department then enters each conviction on the driver’s record and considers each conviction accordingly.

Despite this, in certain instances the manner in which the Department has phrased its administrative rules regarding sanctions has caused administrative law judges to disregard convictions for traffic violations written under a corresponding municipal ordinance and rescind an otherwise appropriate sanction, under the rationale that the administrative rule specified that the sanction only applied to a person convicted of violating a specified section of Iowa Code chapter 321 and a conviction written under a corresponding municipal ordinance was not a conviction under the specific section of Iowa Code chapter 321. To ensure that licensing and sanction decisions for like conduct and violations remain consistent regardless of whether the conviction was entered under a section within Iowa Code chapter 321 or a corresponding municipal ordinance, the amendments specify that the sanction may be imposed if a person is convicted of the specified section of Iowa Code chapter 321 “or a similar ordinance of any political subdivision.” The amendments affect rules imposing sanctions for illegally passing a stopped school bus, as required by Iowa Code section 321.372(3), and for violating Iowa’s “slow down, move over” law, as required by Iowa Code section 321.323A. The amendments do not change the required sanctions and do not in any way implicate civil penalties entered against a vehicle owner under automated traffic enforcement ordinances, which are not criminal traffic convictions and are not reported to Iowa’s courts or to the Department.

“Slow down, move over” law. The amendments add convictions for violations of Iowa Code section 321.323A that result in damage to the property of another person or bodily injury to or death of another person, as a qualifying serious violation under rule 761—615.17(321). Iowa Code section 321.323A, often referred to as Iowa’s “slow down, move over” law, requires a driver approaching a stationary vehicle displaying authorized flashing lights or emergency signal lamps to approach the vehicle with due caution and, absent any other direction by a peace officer, either make a lane change into a lane not adjacent to the stationary motor vehicle if possible in the existing safety and traffic conditions, or, if a lane change would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less

TRANSPORTATION DEPARTMENT[761](cont'd)

than the posted speed limit, and be prepared to stop. The amendments conform the rules to Iowa Code section 321.323A as amended by 2018 Iowa Acts, House File 2304, sections 1 to 4, which requires the Department to suspend the license of a person convicted of a violation of Iowa Code section 321.323A for 90 days if the violation caused only property damage to another person, for 180 days if the violation caused bodily injury to another person, and for one year if the violation caused the death of another person.

Suspension for moving violations during driving probation. Iowa Code section 321.210C provides that a person who has lost driving privileges for a moving violation under Iowa Code chapter 321 or a comparable moving violation in another jurisdiction, or for an OWI violation under Iowa Code chapter 321J, must satisfactorily complete a 12-month probation period beginning immediately after the end of the period of suspension, revocation, or bar of the person's driving privileges. Under Iowa Code section 321.210C, if the person is convicted of another moving violation committed during the driving probation (excluding the first two speeding violations that are 10 miles per hour or less in speed zones of 35 miles per hour to 55 miles per hour), the Department may suspend the person's driver's license or operating privileges for an additional period equal in duration to the original period of suspension, revocation, or bar, or for one year, whichever is the shorter period. The amendments clarify that the Department's rule implementing Iowa Code section 321.210C applies only to the period of driving probation required under Iowa Code section 321.210C (as opposed to a criminal period of probation imposed by the Iowa courts) and add language that specifies a suspension for violation of a driving probation shall be equal in duration to the original period of suspension, revocation or bar, or for one year, whichever is the shorter period, to ensure the implementing rule matches the content and requirements of Iowa Code section 321.210C.

Drug revocations. 2018 Iowa Acts, House File 2502, division XXV, section 102, repealed Iowa Code section 901.5(10), which required the Department to revoke the driver's license or motor vehicle operating privileges of a defendant convicted of certain nondriving drug offenses for a period of 180 days or to delay the issuance of a driver's license for 180 days after the person is first eligible if the defendant has not been issued a driver's license. The legislation also eliminated all references to Iowa Code section 901.5(10). To conform the rules with this legislation, the amendments remove all provisions in the Department's rules that implement or reference drug revocations previously required by Iowa Code section 901.5(10). This legislation became effective July 1, 2018, and consistent with its provisions, the Department has ended all drug revocations previously imposed and still in effect as of July 1, 2018, and discontinued the practice of imposing these revocations beginning July 1, 2018.

Appearance before an examiner. The Department's rules regarding reinstatement or reissuance of a driver's license following a period of sanction require a person to "appear before an examiner" to obtain or reinstate the license. This provision is not necessary, as any properly trained issuance staff may help a person reinstate or reissue a license. The amendment strikes outdated language, and the conditions for reinstatement or reissuance remain unchanged.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3967C**. No public comments were received. However, the Department did receive a comment from a member of the Administrative Rules Review Committee at its meeting on September 11, 2018. The comment related to the implementation of the proposed amendment to rule 761—615.32(321) and, specifically, the extension of a habitual offender bar under Iowa Code chapter 321J. It is not Department practice to extend habitual offender bars under Iowa Code chapter 321J, nor was it the intent to change that practice with the amendments to the rule. Rather, the intent was to delineate the difference between the extension of license sanctions under Iowa Code chapters 321 and 321J and to align the rule with implementing language in the authorizing statute. Because the proposed amendment to rule 761—615.32(321) implied that the Department will begin extending habitual offender bars under Iowa Code chapter 321J, which was not the intent, the Department has

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revised rule 761—615.32(321) to refer only to the extension of license suspensions and revocations under Iowa Code chapter 321J. No additional changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on October 16, 2018.

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 12, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **761—615.1(321)**, definitions of “Contributive accident” and “Moving violation,” as follows:

“*Contributive accident*” or “*contributed to an accident*” means the driver was involved in an accident for which there is evidence in departmental records that the driver performed an act which resulted in or contributed to the accident; or failed to perform an act which would have avoided or contributed to the avoidance of the accident.

“*Moving violation,*” unless otherwise provided in this chapter, means any violation of motor vehicle laws except:

1. Violations of equipment standards to be maintained for motor vehicles.
2. Parking violations as defined in Iowa Code section 321.210.
3. Child restraint and safety belt and harness violations under Iowa Code sections 321.445 and 321.446.
4. Violations of registration, weight and dimension laws.
5. Operating with an expired license.
6. Failure to appear.
7. Disturbing the peace with a motor vehicle.
8. Violations of Iowa Code ~~Supplement~~ section 321.20B for failure to provide proof of financial liability coverage.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 2. Rescind the definition of “Conviction free” in rule **761—615.1(321)**.

ITEM 3. Amend rule 761—615.3(17A) as follows:

761—615.3(17A) Information and address. Applications, forms and information concerning license sanctions are available at any driver’s license ~~examination station or at the address in 761—600.2(17A) service center.~~ Assistance is also available by mail from Driver and Identification Services, 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)244-8725; by facsimile at (515)239-1837; or on the department’s website at www.iowadot.gov.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 4. Amend rule 761—615.9(321) as follows:

761—615.9(321) Habitual offender.

615.9(1) The department shall declare a person to be a habitual offender under Iowa Code ~~subsection section 321.555(1)~~ in accordance with the following point system:

a. Points shall be assigned to convictions as follows:

Conviction	Points
Perjury or the making of a false affidavit or statement under oath to the department of public safety	2 points
Driving while under suspension, revocation or denial (except Iowa Code chapter 321J)	2 points
Driving while under Iowa Code chapter 321J revocation or denial	3 points
Driving while barred	4 points
Operating a motor vehicle in violation of Iowa Code section 321J.2	4 points
An offense punishable as a felony under the motor vehicle laws of Iowa or any felony in the commission of which a motor vehicle is used	5 points
Failure to stop and leave information or to render aid as required by Iowa Code sections 321.261 and 321.263	5 points
Eluding or attempting to elude a pursuing law enforcement vehicle in violation of Iowa Code section 321.279	5 points
Serious injury by a vehicle in violation of Iowa Code subsection 707.6A(3) section 707.6A(4)	5 points
Manslaughter resulting from the operation of a motor vehicle	6 points

b. No change.

615.9(2) No change.

615.9(3) A person declared to be a habitual offender under Iowa Code ~~Supplement section 321.560, unnumbered paragraph 2,~~ shall be barred from operating a motor vehicle on the highways of this state beginning on the date the previous bar expires.

This rule is intended to implement Iowa Code sections 321.555, 321.556 and 321.560.

ITEM 5. Amend rule 761—615.11(321) as follows:

761—615.11(321) Periods of suspension or revocation.

615.11(1) Length. The department shall not suspend or revoke a person’s license for less than 30 days nor for more than one year unless a statute specifies or permits a different period of suspension or revocation.

615.11(2) Extension of suspension or revocation. The department shall extend the period of license suspension or revocation for an additional like period or for one year, whichever period is shorter, when

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the person is convicted of operating a motor vehicle while the person's license is suspended or revoked, unless a statutory exception applies. If the person's driving record does not indicate what the original grounds for suspension or revocation were, the period of license suspension or revocation shall not exceed six months.

This rule is intended to implement Iowa Code sections 321.212 and 321.218.

ITEM 6. Amend rule 761—615.12(321) as follows:

761—615.12(321) Suspension of a habitually reckless or negligent driver.

615.12(1) The department may suspend a person's license if the person is a habitually reckless or negligent driver of a motor vehicle.

~~a. "Habitually reckless or negligent driver" means a person who has accumulated a combination of three or more contributive accidents and convictions for moving violations or three or more contributive accidents within a 12-month period.~~

~~b. "Contributive or contributed" means that there is evidence in departmental records that the driver performed an act which resulted in or contributed to an accident, or failed to perform an act which would have avoided or contributed to the avoidance of an accident.~~

615.12(2) In this rule, the speeding violations specified in Iowa Code ~~paragraph~~ section 321.210(2) "d" and violations under Iowa Code section 321.276 are not included.

615.12(3) No change.

This rule is intended to implement Iowa Code section 321.210.

ITEM 7. Amend subrule 615.13(3) as follows:

615.13(3) In this rule, the speeding violations specified in Iowa Code ~~paragraph~~ section 321.210(2) "d" and violations under Iowa Code section 321.276 are not included.

ITEM 8. Amend paragraph **615.14(1)"c"** as follows:

c. Ineligibility for licensing under Iowa Code ~~subsections~~ sections 321.177(4) to 321.177(7).

ITEM 9. Amend rule 761—615.17(321) as follows:

761—615.17(321) Suspension for a serious violation.

615.17(1) No change.

615.17(2) "Serious violation" means that:

a. No change.

b. The person was convicted of a moving violation which contributed to a fatal motor vehicle accident. ~~"Contributed" is defined in paragraph 615.12(1)"b."~~ The suspension period shall be at least 120 days.

c. No change.

d. The person was convicted of violating Iowa Code ~~subsection~~ section 321.372(3) or a similar ordinance of any political subdivision. The suspension period shall be:

(1) 30 days for a first conviction ~~under Iowa Code subsection 321.372(3)~~.

(2) 90 days for a second conviction ~~under Iowa Code subsection 321.372(3)~~.

(3) 180 days for a third or subsequent conviction ~~under Iowa Code subsection 321.372(3)~~.

e. The person was convicted of violating Iowa Code section 321.323A as amended by 2018 Iowa Acts, House File 2304, sections 1 to 4, or a similar ordinance of any political subdivision. The suspension period shall be:

(1) 90 days for a violation causing property damage only to the property of another person.

(2) 180 days for a violation causing bodily injury to another person.

(3) One year for a violation causing death.

This rule is intended to implement Iowa Code sections 321.210; 321.323A as amended by 2018 Iowa Acts, House File 2304, sections 1 to 4; 321.372; as amended by 2012 Iowa Acts, Senate File 2218, sections 2 and 5, and 321.491.

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ITEM 10. Amend rule 761—615.20(321) as follows:

761—615.20(321) Suspension for moving violation during driving probation. The department may suspend the license of a person convicted of a moving violation pursuant to Iowa Code section 321.210C. The suspension period shall ~~not exceed~~ be equal in duration to the original period of suspension, revocation or bar, or for one year, whichever is the shorter period.

This rule is intended to implement Iowa Code section 321.210C.

ITEM 11. Amend subrule 615.22(1), introductory paragraph, as follows:

615.22(1) The department shall suspend a person's privilege to operate motor vehicles in Iowa when the department is notified by a clerk of the district court ~~on Form No. 431037~~ that the person has been convicted of violating a law regulating the operation of motor vehicles, that the person has failed to pay the fine, penalty, surcharge or court costs arising out of the conviction, and that 60 days have elapsed since the person was mailed a notice of nonpayment from the clerk of the district court.

ITEM 12. Amend rule ~~761—615.23(321)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~232.52(2) "a"(4)~~ 232.52(2), 299.1B, 321.213, 321.213A, 321.213B; and 321.215.

ITEM 13. Amend rule 761—615.29(321) as follows:

761—615.29(321) Mandatory revocation.

615.29(1) The department shall revoke a person's license upon receipt of a record of the person's conviction for an offense listed under Iowa Code section 321.209 ~~or upon receipt of an order issued pursuant to Iowa Code subsection 901.5(10).~~

615.29(2) No change.

615.29(3) The revocation period shall be at least one year except:

a. and *b.* No change.

~~*e.* The revocation period for an order issued pursuant to Iowa Code subsection 901.5(10) is 180 days.~~

This rule is intended to implement Iowa Code sections 321.209; 321.212; as amended by 2018 Iowa Acts, House File 2502, section 96; 321.261; and 707.6A.

ITEM 14. Amend rule 761—615.30(321) as follows:

761—615.30(321) Revocation for out-of-state offense.

615.30(1) The department may revoke an Iowa resident's license when the department is notified by another state that the person committed an offense in that state which, if committed in Iowa, would be grounds for revocation. The notice may indicate either a conviction or a final administrative decision. The period of the revocation shall be the same as if the offense had occurred in Iowa.

~~**615.30(2)** Rescinded IAB 11/20/96, effective 12/25/96.~~

This rule is intended to implement Iowa Code section 321.205.

ITEM 15. Amend rule 761—615.32(321) as follows:

761—615.32(321) Extension of suspension or revocation period under Iowa Code chapter 321J. The Anything in rule 761—615.11(321) notwithstanding, the department shall extend the period of license suspension or revocation for an additional like period when the person is convicted of operating a motor vehicle while the person's license is suspended or revoked under Iowa Code chapter 321J.

This rule is intended to implement Iowa Code sections ~~321.218~~ and section 321J.21.

ITEM 16. Amend paragraph **615.38(1)"a"** as follows:

a. License denials, cancellations and suspensions under Iowa Code sections 321.177 to 321.215 and 321A.4 to 321A.11 ~~except denials under Iowa Code subsection 321.177(10) and suspensions under Iowa Code sections 321.210B, 321.210D, 321.213A and 321.213B.~~

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ITEM 17. Amend paragraph **615.38(2)“b”** as follows:

b. A request for an informal settlement, a request for a contested case hearing, or an appeal of a presiding officer’s decision shall be submitted to the director of ~~the office of driver and identification services~~ at the address in ~~761—600.2(17A)~~ rule 761—615.3(17A).

ITEM 18. Amend subrule 615.38(3) as follows:

615.38(3) Informal settlement or hearing.

a. No change.

b. Notwithstanding paragraph “*a*” of this subrule, 615.38(3) “a,” a request received from a person who has participated in a driver improvement interview on the same matter shall be deemed a request for a contested case hearing.

c. A request for an informal settlement or a request for a contested case hearing shall be deemed timely submitted if it is delivered to the director of ~~the office of driver and identification services~~ or postmarked within the time period specified in the department’s notice of the sanction.

(1) and (2) No change.

ITEM 19. Amend rule 761—615.40(321) as follows:

761—615.40(321) License reinstatement or reissue. ~~A person who becomes eligible for a license after a denial, cancellation, suspension, revocation, bar or disqualification shall be notified by the department to appear before a driver license examiner to obtain or reinstate the license. The license may be issued if the person has:~~ The department may reinstate the license when the denial, cancellation, suspension, revocation, bar or disqualification has ended if the person has:

615.40(1) No change.

615.40(2) Paid the civil penalty when required. The civil penalty is specified in Iowa Code Supplement section 321.218A or 321A.32A.

615.40(3) to 615.40(6) No change.

This rule is intended to implement Iowa Code sections 321.186, 321.191, 321.195, 321.208, 321.212, and 321.218A, 321A.17 and Iowa Code Supplement sections 321.218A and 321A.32A.

ITEM 20. Amend rule 761—615.41(321) as follows:

761—615.41(321) Investigation of convictions based on fraud. A person requesting investigation of fraudulent use of a person’s name or other fraudulent identification that resulted in a record of conviction for a scheduled violation under Iowa Code chapter 321 and listed in Iowa Code section 805.8A may submit a written application to the department using Form 420049, ~~Identity Theft Complaint~~. The department shall review the application and may investigate, if appropriate, as required by Iowa Code section 321.200A. Form 420049 may be obtained by contacting the ~~bureau of investigation and identity protection by mail at Bureau of Investigation and Identity Protection, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa;~~ or on the department’s Web site website.

This rule is intended to implement Iowa Code section 321.200A.

ITEM 21. Amend rule 761—615.45(321) as follows:

761—615.45(321) Temporary restricted license (work permit).

615.45(1) Ineligibility. The department shall not issue a temporary restricted license under Iowa Code ~~subsection~~ section 321.215(1) as amended by 2018 Iowa Acts, House File 2502, section 97, to an applicant:

a. to i. No change.

~~*j.* Whose license has been suspended or revoked for a drug or drug-related offense.~~

~~*k. j.* Whose license has been suspended due to receipt of a certificate of noncompliance from the child support recovery unit.~~

~~*l. k.* Whose license has been suspended due to receipt of a certificate of noncompliance from the college student aid commission.~~

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~~#. l.~~ Whose license has been suspended for a charge of vehicular homicide.

~~#. m.~~ Who has been suspended under Iowa Code ~~subsection~~ section 321.180B(3).

615.45(2) Application.

a. To obtain a temporary restricted license, an applicant shall submit a written request for an interview with a driver's license hearing officer. The request shall be submitted to ~~the office of driver and identification services~~ at the address in ~~761—600.2(17A)~~ rule 761—615.3(17A).

b. If the driver's license hearing officer approves the issuance of a temporary restricted license, the officer shall furnish to the applicant application Form 430100, which is to be completed and submitted to ~~the office of driver and identification services~~.

c. No change.

615.45(3) No change.

615.45(4) Additional requirements. An applicant for a temporary restricted license shall also:

a. and b. No change.

c. Pay the required civil penalty specified in Iowa Code ~~Supplement~~ section 321.218A or 321A.32A.

615.45(5) and 615.45(6) No change.

This rule is intended to implement Iowa Code chapter 321A and sections 252J.8, 321.177, 321.178, 321.184, 321.185, 321.186, 321.189, 321.191, 321.193, 321.194, 321.201, 321.205, 321.209, 321.210, 321.210A, 321.212, 321.213A, 321.213B, 321.215, 321.218, 321.218A, 321.513 and 321.560.

ITEM 22. Rescind the chapter implementation sentence in **761—Chapter 615**.

[Filed 10/16/18, effective 12/12/18]

[Published 11/7/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.

ARC 4120C

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to local exchange competition rules

The Utilities Board hereby amends Chapter 38, "Local Exchange Competition," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 476.2 and 476.15.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.15 and 476.100 and 2018 Iowa Acts, House File 2446.

Purpose and Summary

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this review is to identify and update or eliminate rules that are outdated or inconsistent with statutes and other administrative rules. These amendments are intended to eliminate obsolete provisions and update other provisions which continue to be necessary in relation to the Board's exercise of federally delegated authority to review and mediate or arbitrate interconnection agreements and determine if rates for wholesale services are just and reasonable.

The Board issued an order commencing rule making on March 27, 2018. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0028.

UTILITIES DIVISION[199](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 April 25, 2018, as **ARC 3752C**.

The Board received written comments from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Qwest Corporation d/b/a CenturyLink QC (CenturyLink); and the Iowa Communications Alliance (ICA). These stakeholders were generally supportive of the proposed amendments. CenturyLink proposed a change to rule 199—38.4(476) regarding unbundling of network elements, and ICA proposed further revisions to rule 199—38.6(476) regarding terminating access charge complaints.

The Board adopted the amendments as published under Notice except for one change. The Board adopted one revision to rule 199—38.6(476) (Item 5) as suggested by ICA. As adopted, the amendment strikes a clause that refers to the stricken legacy provisions regarding exchange of traffic and monetary compensation for local traffic.

Adoption of Rule Making

This rule making was adopted by the Utilities Board on October 8, 2018.

Fiscal Impact

After analysis and review of this rule making, the Board tentatively concludes that the amendments will have no effect on the expenditure of public moneys within the state of Iowa.

Jobs Impact

After analysis and review of this rule making, the Board concludes that the amendments will not have a detrimental effect on employment in Iowa.

Waivers

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of a Board rule under rule 199—1.3(17A,474,476).

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 12, 2018.

The following rule-making actions are adopted:

ITEM 1. Rescind the definitions of “Interim number portability” and “Provider number portability” in subrule **38.1(2)**.

ITEM 2. Rescind and reserve rule **199—38.2(476)**.

ITEM 3. Amend rule 199—38.4(476) as follows:

199—38.4(476) Unbundled facilities, services, features, functions, and capabilities.

38.4(1) *Initial tariff Tariff filings.*

a. Filing schedule. Each local exchange carrier shall file ~~initial~~ tariffs implementing unbundling for the facilities enumerated in paragraph ~~“b”~~ within ~~90 days of the board’s final order adopting these~~

UTILITIES DIVISION[199](cont'd)

~~rules, except for local exchange carriers with fewer than 75,000 access lines which must file initial unbundling tariffs on or before July 1, 1997. 38.4(1) "b."~~ The obligation to file a tariff shall not apply to a rural telephone company until the conditions specified in 47 U.S.C. Section 251(f)(1) have been met.

~~b. Initial list~~ *List of unbundled essential facilities.* Each local exchange carrier's initial tariff filing shall, at a minimum, unbundle the following essential facilities, services, features, functions, and capabilities: loops, ports, signaling links, signal transfer points, facilities to interconnect unbundled links at the central office, interoffice transmission facilities, ~~directory listings in white pages, directory listings in yellow pages,~~ listings in the directory assistance database, inbound operator services including ~~busy-line~~ busy-line verification and call interrupt, interconnection to the 911 system, and interconnection to the tandem switch for routing to other carriers.

~~38.4(2) Subsequent requests~~ *Requests for unbundled facilities.* Except as allowed in subrule 38.4(3), requests to unbundle facilities, services, features, functions, and capabilities shall be processed as follows:

a. ~~Subsequent to the initial tariff filings provided for in subrule 38.4(1) above,~~ a A competitive local exchange service provider may make a bona fide request of a local exchange carrier to make additional unbundled essential facilities available. After receiving a request for additional unbundled essential facilities, the local exchange carrier shall respond within 30 days of the request by either by agreeing to the request or by denying the request. If the local exchange carrier agrees to fulfill the request, ~~it~~ the carrier shall file a tariff unbundling the essential facility within 60 days of the initial request.

b. If the local exchange carrier denies the request, a competitive local exchange service provider may petition the board to classify the requested facility as essential, as defined by Iowa Code section 476.100(2), and to require the local exchange carrier to make ~~it~~ the requested facility available on an unbundled basis by filing a tariff. In such a petition, the competitive local exchange service provider shall provide information to the board showing how the requested facility meets the definition of essential facility found in Iowa Code section 476.100(2).

The petitioning party under this subrule may state a preference for proceeding by rule making or contested case, but the board will select the process to be used.

38.4(3) to 38.4(5) No change.

ITEM 4. Amend rule 199—38.5(476) as follows:

199—38.5(476) Cost standards.

~~38.5(1) Existing standards.~~ In addition to the standards in this rule, the cost support requirements of rules 199—22.12(476) and 22.13(476) shall apply to all of a local exchange carrier's rate proceedings prior to the implementation of price regulation.

~~38.5(2)~~ **38.5(1) Incremental cost standard.** In general, each local exchange carrier shall price each of its services above the total service long-run incremental cost of providing each service. ~~However, this incremental cost standard shall not be construed to require any increase in the rate for any service prior to the implementation of price regulation, nor to require any price increase that is greater than allowed under a price regulation plan or under Iowa Code section 476.97(11).~~

~~38.5(3)~~ **Imputation test.** In general, prices for each retail service offered by a local exchange carrier should equal or exceed the sum of an allocation of the tariffed prices for all unbundled essential facilities used to provide the service and the incremental costs of all other facilities or services that are components of the retail service. ~~However, this imputation test shall not be construed to require any increase in the rate for any service prior to the implementation of price regulation, nor to require any price increase that is greater than allowed under a price regulation plan or under Iowa Code section 476.97(11).~~

~~38.5(4)~~ **Reporting requirements.** A local exchange carrier shall provide current information to the board showing that the conditions of the incremental cost standard described in subrule 38.5(2) and the imputation test described in subrule 38.5(3) continue to be met whenever it proposes to lower the price of a retail service, it proposes the initial price of an unbundled essential facility, it proposes to raise the price of an unbundled essential facility, or it offers a new service.

UTILITIES DIVISION[199](cont'd)

~~38.5(5)~~ **38.5(2)** *Competitive local exchange service providers.* Cost support will generally not be required for the tariff filings from competitive local exchange service providers, with the exception of 38.2(1)“b.”.

ITEM 5. Amend rule 199—38.6(476) as follows:

199—38.6(476) Compensation for termination of telecommunications services Terminating access charge complaints.

~~38.6(1)~~ *Mutual exchange of traffic.* Until the board approves monetary compensation and until tariffs for the compensation are in effect, each local utility shall terminate local and extended area service calls on a mutual exchange of traffic basis, at no charge to the originating provider. As an alternative, a local utility may elect the negotiation, mediation, and arbitration procedures available under 47 U.S.C. Section 252, by notifying the other affected local utility and the board in writing.

~~38.6(2)~~ *Requests to end mutual exchange of traffic.* A facilities-based local utility may file a cost-based tariff for monetary compensation for terminating local access service, provided its filing includes a showing that in six consecutive calendar months of mutual traffic exchange between it and another facilities-based local utility the total terminating to originating traffic for the entire six-month period was unbalanced by a ratio of at least 55 percent terminating to 45 percent originating. The tariff filing must include appropriate cost support information. The terms and conditions listed in the tariff shall be applicable to all local utilities operating within the local utility’s service territory or within a service territory with extended area service to the local utility’s service territory. On the date the tariff becomes effective, compensation on a mutual exchange basis will end.

~~38.6(3)~~ *Monetary compensation requirements for other utilities.* Within 60 days of board approval of a tariff for monetary compensation for terminating local access service, each other local utility operating within the service territory of the local utility or within a service territory with extended area service to the local utility must file a tariff for monetary compensation for terminating local access service. The tariff filing must include sufficient evidentiary support to allow the board to determine that the compensation will be reciprocal. The terms and conditions listed in the tariff shall be applicable to all local utilities operating within the local utility’s service territory or within a service territory with extended area service to the local utility’s service territory. Until a local utility has an approved tariff in effect, it must charge the rates for terminating local access service in the approved tariff of the local utility with which it exchanges traffic.

~~38.6(4)~~ *Terminating access charge complaints.* No local utility shall deliver traffic to another local utility as local service or extended area service terminating traffic, to which mutual exchange or monetary compensation would apply under this rule, if the terminating traffic is long distance or some other type of traffic for which terminating switched access charges would otherwise have been payable. Any local utility may bring a complaint to the board if another local utility has violated this requirement or taken insufficient measures to determine whether switched access charges would otherwise have been payable. The board may order appropriate refunds with interest of compensation received by a local utility in violation of this rule payment or refund of compensation withheld from or received by a local utility in violation of this rule, with appropriate interest or tariffed late payment penalties.

ITEM 6. Amend rule 199—38.7(476) as follows:

199—38.7(476) Mediation and arbitration. This rule shall apply to all local utilities, except for rural telephone companies as defined in Section 3(47) of the Telecommunications Act of 1996. The board may make all or part of this rule applicable to a rural telephone company or companies in proceedings relating to Section 251(f) of the Act.

38.7(1) Voluntary negotiations.

a. Initiation of negotiations. A telecommunications carrier initiates the negotiation process by requesting interconnection, services, or network elements as defined in the Act from an incumbent local utility pursuant to Section 252(a)(1) of the Act. The day the request is received by the local utility is day one of the schedule set for resolution of all issues. Within five days of receipt of the request, the local

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utility shall file ~~ten copies of the request~~ with the board using the board's electronic filing system a copy of the request and a statement of the date the request was received ~~with the board.~~

b. No change.

38.7(2) Mediation.

a. Initiation of mediation. At any time during the negotiations, any party to the negotiations may request mediation. The request shall be ~~made in writing to filed with the board using the board's electronic filing system~~ and ~~copies of the mediation request shall be~~ simultaneously served on the other parties. Alternatively, parties may ~~jointly submit their request in writing to file a joint request for mediation with the board.~~ A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone and fax numbers of the parties or their representatives.

b. to e. No change.

38.7(3) No change.

38.7(4) Board review of agreements.

a. Filing of agreements. All interconnection agreements shall be filed with the board for approval within 15 days after the issuance of a final decision on the arbitrated issues, in the case of arbitrated agreements, or, in the case of negotiated agreements, after the execution of the agreement. ~~An original and three copies shall be filed.~~

~~*b. Notice of negotiated agreements, amendments, and adoption of agreements.* Notice of the filing of a negotiated interconnection agreement, an amendment to an agreement, or adoption of an agreement will be posted within five working days after the filing date, on the board's Web site, <http://www.state.ia.us/iub>.~~

e. b. Comments on arbitrated agreements. Within ten days following the filing of the arbitrated agreement with the board for review, the parties involved in the arbitration, and any other interested party, may submit written comments to the board supporting either approval or rejection of the agreement. If the board does not approve or reject the agreement within 30 days after submission by the parties of an agreement adopted by arbitration, the agreement shall be deemed approved.

~~*c. Comments on negotiated agreements and amendments to agreements.* Within 30 days of the filing date of the negotiated agreement or amendment, the parties involved in the negotiations and any other interested party may submit written comments with the board supporting either acceptance or rejection of the agreement or amendment. If no comments are filed and no issues are generated by the internal board review, the agreement or amendment shall be deemed approved 41 days after the filing date. If comments opposing approval are filed or the internal board review recommends investigation, the agreement or amendment shall be docketed. The docketing order shall be issued within 40 days after the filing date. If the board does not issue a decision on a docketed filing within 90 days after the filing date, the agreement or amendment shall be deemed approved.~~

e. d. Comments on adoption of agreements. No board approval is necessary when there is an adoption of the terms, conditions, and rates from an approved interconnection agreement. The adoption is effective upon filing. If there are terms, conditions, or rates in the filing that are not from an adopted agreement, then the filing is subject to the provisions of paragraph ~~38.7(4)"d."~~ 38.7(4)"c."

~~*f. e. Indefinite terms, conditions, or rates.* When the agreement or amendment contains terms, conditions, or rates that are not yet agreed to, the parties shall file an amendment to the agreement once they have reached agreement on the terms, conditions, or rates.~~

[Filed 10/8/18, effective 12/12/18]

[Published 11/7/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.