



# IOWA ADMINISTRATIVE BULLETIN

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NUMBER 11  
Pages 819 to 952

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

### 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 2015

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
13	Wednesday, December 2, 2015	December 23, 2015
14	Wednesday, December 16, 2015	January 6, 2016
15	Wednesday, December 30, 2015	January 20, 2016

**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 8, 2015, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

#### **ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Travel, employment examinations and applicant lists, education financial assistance, procurements—clarifications and updates, amendments to chs 41, 42, 54, 56, 64, 117,  
119 Filed **ARC 2267C** ..... 11/25/15  
Contract compliance, ch 121 Filed **ARC 2268C** ..... 11/25/15

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

COMMERCE DEPARTMENT[181]“umbrella”

Filling and selling of beer in a container other than the original container by class “C” beer permit holders, 4.1, 4.6 Notice **ARC 2255C** ..... 11/25/15  
Tastings; samplings; trade spending, 16.1, 16.7 to 16.9 Filed **ARC 2254C** ..... 11/25/15

#### **CORRECTIONS DEPARTMENT[201]**

Iowa state industries, 37.2(5), 37.3, 37.4, 37.7, 37.8(1), 37.9 Filed **ARC 2256C** ..... 11/25/15

#### **DENTAL BOARD[650]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Retired volunteer license, 13.4 Notice **ARC 2252C** ..... 11/25/15

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

Nuisance property and abandoned building remediation assistance, ch 22 Notice **ARC 2263C** ..... 11/25/15

#### **EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]“umbrella”

Licensure fees—\$4 increase, amendments to ch 12 Filed **ARC 2229C** ..... 11/11/15  
Background checks for applicants, 13.1, 15.7, 16.1, 18.1, 20.3, 22.1 to 22.3, 22.5, 22.7, 22.8, 22.10, 23.1, 24.1, 27.2 Filed **ARC 2230C** ..... 11/11/15  
Professional school counselor endorsement—practicum and internship hours, 13.28, 27.3 Notice **ARC 2237C** ..... 11/11/15

#### **ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

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#### **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]**

Wireless NG911 implementation and operations plan, 10.2, 10.7(2), 10.8(5), 10.9(3) Filed **ARC 2270C** ..... 11/25/15

#### **HUMAN SERVICES DEPARTMENT[441]**

Implementation of Medicaid modernization initiative, amend chs 36, 74, 75, 77 to 79, 81 to 83, 85, 90; rescind ch 92 Notice **ARC 2242C** ..... 11/11/15  
Managed care, adopt ch 73; amend ch 88 Notice **ARC 2241C** ..... 11/11/15  
Intellectual disability waiver services cost-savings initiative, 79.1(2), 83.66 Notice of Termination **ARC 2243C** ..... 11/11/15

#### **INSPECTIONS AND APPEALS DEPARTMENT[481]**

Update of CFR references related to food processing plants, egg products processing plants, and pork products prepared at retail, 31.1(19), 31.2 Filed **ARC 2257C** ..... 11/25/15

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

COMMERCE DEPARTMENT[181]“umbrella”

Limited licenses for motor vehicle rental companies and counter employees and for persons who sell portable electronics insurance, amendments to ch 10 Filed **ARC 2260C** ..... 11/25/15  
Sales of cemetery merchandise, funeral merchandise and funeral services, amend ch 15; rescind chs 100 to 105; adopt ch 100 Filed **ARC 2258C** ..... 11/25/15  
Intrastate crowdfunding exemption, 50.90 Filed **ARC 2259C** ..... 11/25/15

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

Title guaranty division, 9.1 to 9.22 Regulatory Analysis ..... 11/25/15

**LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

- Alterations—residential elevators installed in public buildings, escalators, 71.10(3),  
72.13(6), 73.8(7) Notice **ARC 2264C** ..... 11/25/15
- Boilers and pressure vessels—adoption of current industry standards by reference, 90.6(1),  
91.1 Notice **ARC 2251C** ..... 11/25/15

**MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Standards of practice—prescribing epinephrine auto-injectors in the name of an authorized  
facility, 13.12 Notice **ARC 2249C** ..... 11/25/15

**PUBLIC SAFETY DEPARTMENT[661]**

- Fire code provisions—adoption by reference, amendments to chs 200 to 202, 210 Notice **ARC 2266C**..... 11/25/15
- State building code—adoption by reference of certain provisions of 2015 International  
Building Code (IBC), amendments to chs 300 to 302, 315 Notice **ARC 2250C** ..... 11/25/15
- State historic building code—adoption of International Existing Building Code by reference,  
350.1 Notice **ARC 2265C** ..... 11/25/15
- Electrician and electrical contractor licensing program; postsecondary electrical education  
programs; electrical inspection program and inspector qualifications, amendments to chs  
501, 502, 505, 550 Filed **ARC 2245C** ..... 11/25/15

**REVENUE DEPARTMENT[701]**

- Qualification for manufacturing exemption, 15.3(3), 18.29(7), 18.58, 219.11, 219.12,  
219.13(3), 230.5, 230.14 to 230.22 Amended Notice **ARC 2239C**..... 11/11/15
- Excise tax rate on motor and special fuels; biodiesel distribution percentage formula, 67.1,  
67.21, 68.2, 68.4, 68.13 Filed **ARC 2247C** ..... 11/25/15

**SECRETARY OF STATE[721]**

- Voter registration in state agencies—national voter registration Act compliance, 23.3 to 23.6,  
23.10 Notice **ARC 2262C** ..... 11/25/15
- Voter registration—fees, 28.2(2) Notice **ARC 2269C**..... 11/25/15

**STATE PUBLIC DEFENDER[493]**

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

- Claims of contract attorneys and other professionals, 1.3(2), 11.3, 11.7(2), 11.9, 12.2,  
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**TRANSPORTATION DEPARTMENT[761]**

- Update of uniform rules—rule making, waivers, declaratory orders, 10.1 to 10.3, 11.5(3),  
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- Farm-to-market review board, 101.3(1), 101.4 Notice **ARC 2248C** ..... 11/25/15
- Road fund formulas; distribution committee, 102.1, 102.2, 102.5, 102.6, 102.7(6) Filed **ARC 2232C** ..... 11/11/15

**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]“umbrella”

- Renewable energy tax credits, 15.19(1) Filed **ARC 2244C** ..... 11/25/15

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

- Iowa reading corps, ch 11 Filed **ARC 2238C** ..... 11/11/15

**VOTER REGISTRATION COMMISSION[821]**

- Online voter registration, 2.4, 2.8(2), 8.1, 11.6 Amended Notice **ARC 2246C** ..... 11/25/15
- Request for voter registration list—definition of “political purposes,” 3.2 Notice **ARC 2261C** ..... 11/25/15

## ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren  
819 Hutchinson  
Ottumwa, Iowa 52501

Senator Mark Costello  
37265 Rains Avenue  
Imogene, Iowa 51645

Senator Thomas Courtney  
2609 Clearview  
Burlington, Iowa 52601

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

Senator Pam Jochum  
2368 Jackson Street  
Dubuque, Iowa 52001

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Representative Lisa Heddens  
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4470 Highway 71  
Sioux Rapids, Iowa 50585

Representative Rick Olson  
3012 East 31st Court  
Des Moines, Iowa 5031

Representative Dawn Pettengill  
P.O. Box A  
Mt. Auburn, Iowa 52313

Representative Guy Vander Linden  
1610 Carbonado Road  
Oskaloosa, Iowa 52577

Larry Johnson, Jr.  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 18  
Des Moines, Iowa 50319  
Telephone (515)281-5211

**ALCOHOLIC BEVERAGES DIVISION[185]**

Filling and selling of beer in a container other than the original container by class “C” beer permit holders, 4.1, 4.6 IAB 11/25/15 <b>ARC 2255C</b>	Division Board Room 1918 S.E. Hulsizer Rd. Ankeny, Iowa	December 18, 2015 10 a.m.
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**DENTAL BOARD[650]**

Retired volunteer license, 13.4 IAB 11/25/15 <b>ARC 2252C</b>	Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa	December 16, 2015 2 p.m.
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**EDUCATIONAL EXAMINERS BOARD[282]**

Professional school counselor endorsement—practicum and internship hours, 13.28, 27.3 IAB 11/11/15 <b>ARC 2237C</b>	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	December 2, 2015 1 p.m.
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**HUMAN SERVICES DEPARTMENT[441]**

Implementation of Medicaid modernization initiative, amend chs 36, 74, 75, 77 to 79, 81 to 83, 85, 90; rescind ch 92 IAB 11/11/15 <b>ARC 2242C</b>	<i>Cedar Rapids Service Area</i> Whipple Auditorium, Public Library 450 5th Ave. SE Cedar Rapids, Iowa	December 2, 2015 9 to 11 a.m.
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<i>Eastern Service Area</i> Boardroom, Administration Bldg. 600 W. 4th St. Davenport, Iowa	December 2, 2015 1 to 3 p.m.
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<i>Des Moines Service Area</i> Conference Room 1-1A Polk County River Place 2309 Euclid Ave. Des Moines, Iowa	December 4, 2015 9 to 11 a.m.
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<i>Northern Service Area</i> Conf. Rm. 201, Pinecrest Office Bldg. Black Hawk County DHS 1407 Independence Ave. Waterloo, Iowa	December 4, 2015 1 to 3 p.m.
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<i>Western Service Area</i> Public Library 200 Pearl St. Council Bluffs, Iowa	December 4, 2015 2 to 4 p.m.
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Managed care, adopt ch 73; amend ch 88 IAB 11/11/15 <b>ARC 2241C</b>	<i>Cedar Rapids Service Area</i> Whipple Auditorium, Public Library 450 5th Ave. SE Cedar Rapids, Iowa	December 2, 2015 9 to 11 a.m.
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<i>Eastern Service Area</i> Boardroom, Administration Bldg. 600 W. 4th St. Davenport, Iowa	December 2, 2015 1 to 3 p.m.
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**HUMAN SERVICES DEPARTMENT[441]** (cont'd)

<i>Des Moines Service Area</i> Conference Room 1-1A Polk County River Place 2309 Euclid Ave. Des Moines, Iowa	December 4, 2015 9 to 11 a.m.
<i>Northern Service Area</i> Conf. Rm. 201, Pinecrest Office Bldg. Black Hawk County DHS 1407 Independence Ave. Waterloo, Iowa	December 4, 2015 1 to 3 p.m.
<i>Western Service Area</i> Public Library 200 Pearl St. Council Bluffs, Iowa	December 4, 2015 2 to 4 p.m.

**IOWA FINANCE AUTHORITY[265]**

Title guaranty division, 9.1 to 9.22 IAB 9/2/15 <b>ARC 2128C</b> (See Regulatory Analysis herein)	Authority Office 2015 Grand Ave. Des Moines, Iowa	December 15, 2015 1:30 to 2:30 p.m.
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**LABOR SERVICES DIVISION[875]**

Alterations—residential elevators installed in public buildings, escalators, 71.10(3), 72.13(6), 73.8(7) IAB 11/25/15 <b>ARC 2264C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	December 16, 2015 1:30 p.m. (If requested)
Boilers and pressure vessels—adoption of current industry standards by reference, 90.6(1), 91.1 IAB 11/25/15 <b>ARC 2251C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	December 16, 2015 2:30 p.m. (If requested)

**MEDICINE BOARD[653]**

Standards of practice—prescribing epinephrine auto-injectors in the name of an authorized facility, 13.12 IAB 11/25/15 <b>ARC 2249C</b>	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	December 15, 2015 11 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Fire code provisions—adoption by reference, amendments to chs 200 to 202, 210 IAB 11/25/15 <b>ARC 2266C</b>	First Floor Conference Room 125 Oran Pape State office Bldg. 215 E. 7th St. Des Moines, Iowa	January 5, 2016 10 a.m.
	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.
	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.
State building code—adoption by reference of certain provisions of 2015 International Building Code (IBC), amendments to chs 300 to 302, 315 IAB 11/25/15 <b>ARC 2250C</b>	First Floor Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	January 5, 2016 10 a.m.

**PUBLIC SAFETY DEPARTMENT[661]** (cont'd)

	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.
	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.
State historic building code—adoption of International Existing Building Code by reference, 350.1 IAB 11/25/15 <b>ARC 2265C</b>	First Floor Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	January 5, 2016 10 a.m.
	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.
	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.

**REVENUE DEPARTMENT[701]**

Qualification for manufacturing exemption, 15.3(3), 18.29(7), 18.58, 219.11, 219.12, 219.13(3), 230.5, 230.14 to 230.22 IAB 11/11/15 <b>ARC 2239C</b> (See <b>ARC 2178C</b> , IAB 9/30/15)	Auditorium Wallace State Office Bldg. Des Moines, Iowa	December 1, 2015 2 p.m.
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**SECRETARY OF STATE[721]**

Voter registration in state agencies—national voter registration Act compliance, 23.3 to 23.6, 23.10 IAB 11/25/15 <b>ARC 2262C</b>	Secretary of State Office Lucas State Office Bldg. Des Moines, Iowa	December 23, 2015 8:30 a.m.
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**STATE PUBLIC DEFENDER[493]**

Claims of contract attorneys and other professionals, 1.3(2), 11.3, 11.7(2), 11.9, 12.2, 12.5(5), 12.8(1), 13.2 IAB 11/11/15 <b>ARC 2233C</b>	Conference Room 424, Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	December 4, 2015 10 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Farm-to-market review board, 101.3(1), 101.4 IAB 11/25/15 <b>ARC 2248C</b>	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	December 17, 2015 10 a.m. (If requested)
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**VOTER REGISTRATION COMMISSION[821]**

Online voter registration, 2.4, 2.8(2), 8.1, 11.6 IAB 11/25/15 <b>ARC 2246C</b> (See <b>ARC 2160C</b> , IAB 9/30/15)	Secretary of State Office, First Floor Lucas State Office Bldg. Des Moines, Iowa	December 23, 2015 8:30 a.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 2255C

## ALCOHOLIC BEVERAGES DIVISION[185]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

The proposed amendments adopt a new rule 185—4.6(123), which establishes guidelines for class “C” beer permit holders to fill and sell beer in a container other than the original container, subject to and mandated by Iowa Code section 123.132 as amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14, and pursuant to rules adopted by the Alcoholic Beverages Division. The amendments are necessary to:

- Establish filling and refilling requirements,
- Establish sealing requirements, and
- Establish restrictions for the filling, refilling and selling of beer in a container other than the original container.

The proposed amendments also define three terms to provide clarity for the reader. One definition is added in new rule 185—4.6(123), while two definitions are added to rule 185—4.1(123) because the definitions are equally applicable to other retail permit holders.

Stakeholders were consulted during the drafting of the proposed amendments. The proposed amendments were then circulated to stakeholders prior to the filing of this Notice.

Any person or agency may submit written comments concerning the proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tyler Ackerson, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; Internet e-mail address: [Ackerson@iowaabd.com](mailto:Ackerson@iowaabd.com).
5. Be received by the Alcoholic Beverages Division no later than 4:30 p.m. on December 15, 2015.

A meeting to hear requested oral presentations is scheduled for Friday, December 18, 2015, at 10 a.m. in the Board Room at the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa.

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

These amendments do not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

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

These amendments are intended to implement Iowa Code chapter 123 as amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrules 4.1(3) and 4.1(4):

**4.1(3)** “Growler” means any fillable and sealable glass, ceramic, plastic, aluminum or stainless steel container designed to hold only beer or high alcoholic content beer.

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

**4.1(4)** “*Original container*” means a vessel containing an alcoholic beverage which bears a label approved by the Alcohol and Tobacco Tax and Trade Bureau and which has been securely capped, sealed or corked at the location of manufacture.

ITEM 2. Adopt the following new rule 185—4.6(123):

**185—4.6(123) Filling and selling of beer in a container other than the original container by class “C” beer permit holders.** Class “C” beer permit holders and their employees may fill, refill and sell beer in a container other than the original container, otherwise known as a growler as defined in subrule 4.1(3), subject to the requirements and restrictions provided in Iowa Code section 123.132 as amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14, and in this rule.

**4.6(1) Definition.**

“*Beer*,” for the purpose of this rule, means “beer” as defined in Iowa Code section 123.3(7) and “high alcoholic content beer” as defined in Iowa Code section 123.3(19).

**4.6(2) Sales criteria and restrictions.** All sales made pursuant to this rule shall be made in-person. Beer packaged and sold pursuant to this rule shall not be delivered or direct-shipped to consumers.

**4.6(3) Filling and refilling requirements.**

- a. A growler shall have the capacity to hold no more than 72 ounces.
- b. A growler shall be filled or refilled only by the permittee or the permittee’s employees who are 18 years of age or older.
- c. A growler shall be filled or refilled only on demand by a consumer at the time of the in-person sale.
- d. A growler shall be filled or refilled only with beer from the original container procured from a duly licensed wholesaler.
- e. A retailer may exchange a growler to be filled or refilled, provided the exchange occurs at the time of the in-person sale.
- f. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

**4.6(4) Sealing requirements.** A filled or refilled growler shall be securely sealed at the time of the sale by the permittee or the permittee’s employees in the following manner:

- a. A growler shall bear a twist-type cap, screw-on cap, flip-top lid, swing-top lid, stopper, or plug.
- b. A plastic heat shrink wrap band, strip, or sleeve shall extend around the twist-type cap, screw-on cap, flip-top lid, or swing-top lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler.
- c. The heat shrink wrap seal shall be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.
- d. A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

**4.6(5) Restrictions.**

- a. Beer shall not be consumed on the premises of a class “C” beer permit holder.
- b. A growler shall not be filled in advance of a sale.
- c. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.
- d. A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.
- e. A permittee or a permittee’s employees shall not allow a consumer to fill or refill a growler.
- f. The filling, refilling and selling of a growler shall be limited to the hours in which beer may be legally sold.
- g. A filled or refilled growler shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.
- h. An original container shall only be opened by the permittee or the permittee’s employees for the limited purpose of filling or refilling a growler as provided in this rule.

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

**4.6(6) Violations.** Failure to comply with the requirements and restrictions of this rule shall subject the permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 123.132 as amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14.

**ARC 2252C****DENTAL BOARD[650]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.2, the Dental Board hereby gives Notice of Intended Action to amend Chapter 13, “Special Licenses,” Iowa Administrative Code.

The purpose of the proposed rule is to implement the licensing provisions of 2015 Iowa Acts, House File 202 [Iowa Code section 153.23], relating to the licensure of retired volunteer dentists and dental hygienists. The proposed rule establishes the criteria for application and qualification for such a license and establishes standards that must be met in order to retain the license. Current rules do not permit dentists or dental hygienists the option to obtain a retired volunteer license.

Any interested person may make written comments on the proposed amendment on or before December 16, 2015. Such written materials should be directed to Phil McCollum, Associate Director, Iowa Dental Board, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa 50309, or sent by e-mail to [phil.mccollum@iowa.gov](mailto:phil.mccollum@iowa.gov).

There will be a public hearing on December 16, 2015, at 2 p.m. in the Board office, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing.

The proposed rule is subject to waiver or variance pursuant to 650—Chapter 7.

After analysis and review of this rule making, no impact on jobs has been found for dentists or dental hygienists.

This rule is intended to implement 2015 Iowa Acts, House File 202 [Iowa Code section 153.23].

The following amendment is proposed.

Adopt the following **new** rule 650—13.4(153):

**650—13.4(153) Retired volunteer license.** Upon application and qualification the board may issue a retired volunteer license to a dentist or dental hygienist who has retired from the practice of dentistry or dental hygiene to enable the dentist or dental hygienist to provide volunteer dental or dental hygiene services without remuneration.

**13.4(1)** Applications for a retired volunteer license shall be made on forms provided by the board, which may include online applications, and must be complete. Incomplete applications will not be accepted.

**13.4(2)** Applications shall be filed with the board and must include:

- a. Satisfactory evidence that the applicant has retired from practice; and
- b. A statement disclosing and explaining any disciplinary actions or criminal charges, or both; and
- c. Satisfactory evidence demonstrating that:

(1) The applicant has held an active dental or dental hygiene license within the previous five years;

or

(2) The applicant possesses sufficient knowledge and skill to practice safely and competently if the applicant has not held an active dental or dental hygiene license within the previous five years.

**13.4(3)** A person holding a retired volunteer license shall not practice unless an Iowa-licensed dentist with an active license is present at the location of practice at all times. Screenings and

## DENTAL BOARD[650](cont'd)

educational programs may be performed without the presence of an Iowa-licensed dentist with an active license, provided that all other board rules governing the respective practice in regards to supervision requirements and permitted scope of practice are met.

**13.4(4)** A person holding a retired volunteer license shall not charge a fee or receive compensation or remuneration in any form from any person or third-party payer including but not limited to an insurance company, health plan, or state or federal benefit program.

**13.4(5)** An applicant who has surrendered, resigned, converted, or allowed a license to lapse or expire as the result of or in lieu of disciplinary action shall not be eligible for a retired volunteer license.

**13.4(6)** A retired volunteer license shall not be considered to be an active license to practice dentistry or dental hygiene and cannot be converted to any regular license type with active or inactive status.

**13.4(7)** A person holding a retired volunteer license is prohibited from delegating duties to other licensees or registrants and is prohibited from providing any level of supervision to other licensees or registrants. Licensees and registrants assisting persons with a retired volunteer license do so only under the delegation and supervision of the Iowa-licensed dentist with an active license who is required to be present at all times.

**13.4(8)** A person holding a retired volunteer license is prohibited from prescribing, administering, or dispensing prescription drugs and all controlled substances.

**13.4(9)** A person holding a retired volunteer license is subject to all rules and regulations governing the practice of dentistry or dental hygiene except those related to the payment of fees, license renewal, and continuing education.

**13.4(10)** The board shall not charge an application or licensing fee for issuance of a retired volunteer license.

**13.4(11)** A retired volunteer license is valid for 12 months from the date of issuance, at which time it expires and becomes invalid. A retired volunteer license holder whose license has become invalid is prohibited from the practice of dentistry or dental hygiene until a new retired volunteer license is issued.

**13.4(12)** The board may cancel a retired volunteer license if the holder has practiced outside the scope of the license or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code chapters 147, 153, and 272C and 650—30.4(147,153,272C). When cancellation of a retired volunteer license is proposed, the board shall promptly notify the license holder by sending a statement of charges and notice of hearing by certified mail to the last-known address of the license holder or by personal service. The provisions of 650—Chapter 51 shall govern a contested case proceeding following notice of intent to cancel the license.

**13.4(13)** A person holding a retired volunteer license shall notify the board by written correspondence or through the board's online system of any change in name or home address within seven days of the change. A copy of a certified marriage license or copy of certified court documents is required for proof of a name change.

**13.4(14)** The dental hygiene committee shall make recommendations to the board regarding the issuance or denial of any retired volunteer license to practice dental hygiene. The board's review of the dental hygiene committee's recommendation is subject to 650—Chapter 1.

**13.4(15)** The board may deny a retired volunteer license in accordance with 650—11.9(147,153). The procedure for appealing the denial is set forth in 650—11.10(147).

**13.4(16)** A person holding an inactive Iowa dental or dental hygiene license may also hold a retired volunteer license.

This rule is intended to implement 2015 Iowa Acts, House File 202 [Iowa Code section 153.23].

**ARC 2263C****ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action**

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

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

Pursuant to the authority of 2015 Iowa Code section 15.106A and of 2015 Iowa Acts, Senate File 499, section 48, the Economic Development Authority hereby gives Notice of Intended Action to adopt new Chapter 22, “Nuisance Property and Abandoned Building Remediation Assistance,” Iowa Administrative Code.

In 2015 Iowa Acts, Senate File 499, the General Assembly directed the Authority to establish a fund for purposes of providing financial assistance to cities for the remediation of nuisance properties and abandoned buildings. These rules establish a program to provide such assistance and describe the manner in which the Authority intends to implement and administer the program.

The Economic Development Authority Board approved this amendment on October 16, 2015, at the Board’s monthly meeting.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 15, 2015. Written materials with suggestions and comments may be directed to Nichole Hansen, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Electronic submissions may be sent to [nichole.hansen@iowa.gov](mailto:nichole.hansen@iowa.gov).

After analysis and review of this rule making, no negative impact on jobs has been found, and the Authority finds that the new program is likely to substantially benefit the Iowa economy by helping improve commercial and residential property values and revitalize blighted areas.

These rules are intended to implement 2015 Iowa Acts, Senate File 499, section 48.

The following amendment is proposed.

Adopt the following **new** 261—Chapter 22:

## CHAPTER 22

## NUISANCE PROPERTY AND ABANDONED BUILDING REMEDIATION ASSISTANCE

**261—22.1(15) Authority and purpose.** The authority is directed, pursuant to Iowa Code section 15.338, as enacted by 2015 Iowa Acts, Senate File 499, to establish a fund to provide financial assistance to cities for purposes of assisting with the remediation of nuisance properties and abandoned buildings and other structures and to do so in such a manner as to make funds annually available to cities. In order to ensure that funds are continually available, the authority will administer the fund as a revolving fund.

**261—22.2(15) Definitions.** For purposes of this chapter unless the context otherwise requires:

“*Abandoned building*” or “*abandonment*” means a building that meets either of the following:

1. In the case of a building located within a city’s limits, a building that has remained vacant and has been in violation of the housing code or building code of the city for a period of six consecutive months.

2. In the case of a building located outside a city’s limits, a building that has remained vacant and has been in violation of the housing code or building code applicable in the county in which the building is located for a period of six consecutive months.

“*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 city applying for financial assistance under the program.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

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

“*Building*” means a structure located in a city, or outside the limits of a city in a county, that is either:

1. Used or intended to be used for commercial or industrial purposes; or
2. Used or intended to be used for residential purposes.

“*Building*” includes structures in which some floors may be used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and other floors are used, designed, or intended to be used for residential purposes.

“*Costs directly related*” means expenditures that are incurred for acquisition, demolition, disposal, redevelopment, or rehabilitation of a project to the extent that they are attributable directly to the remediation or redevelopment of the property or its improvements. “*Costs directly related*” includes expenditures for site preparation work, surveying, construction materials, construction labor, architectural services, engineering services, building permits, building inspection fees, and interest accrued on a construction loan during the time period allowed for project completion under an agreement entered into pursuant to the program. “*Costs directly related*” does not include expenditures for furnishings, appliances, accounting services, legal services, loan origination and other financing costs, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

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

“*Financial assistance*” means a loan or forgivable loan made by the authority to an applicant approved for funding under the program.

“*Low- or moderate-income household*” means a household earning 80 percent or less of the applicable area median income, as determined by the U.S. Department of Housing and Urban Development.

“*Nuisance property*” means a building, structure, or other real estate that is, or is likely to become, a public nuisance.

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

“*Project*” means a proposed plan for the remediation or redevelopment of nuisance and abandoned properties in a city. “*Project*” may include properties at multiple sites and locations, whether contiguous or not, as long as all properties to be remediated or redeveloped are included in the proposed plan upon application and as long as the proposed plan demonstrates the steps and actions necessary to further remediation and redevelopment efforts in a comprehensive and coordinated manner.

“*Public nuisance*” means a building that is a menace to the public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe egress, or that constitutes a fire hazard, or is otherwise dangerous to human life, or that in relation to the existing use constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment. “*Public nuisance*” includes buildings with blighting characteristics as defined by Iowa Code section 403.2.

“*Redevelopment*” means development activities associated with a project that are undertaken either for the purpose of remediating nuisance or abandoned properties, for constructing new buildings or improvements at a site where formerly existing buildings have been demolished, or for rehabilitating, reusing or repurposing existing buildings or improvements at a project site. Redevelopment typically includes projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

“*Remediation*” or “*remediating*” means the demolition, disposal, removal, repair, improvement, or rehabilitation of nuisance property or abandoned buildings at a site included in a project.

### **261—22.3(15) Program description.**

**22.3(1) Amount, form, and timing of assistance.** The program provides financial assistance to cities for the redevelopment or remediation of nuisance properties and abandoned buildings and other structures. The amount of assistance awarded will be negotiated between each applicant and the

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

authority based on the total amount of funds available to the authority for the program and based on the project details.

**22.3(2) Application.**

*a.* Each fiscal year in which funding is available, the authority will accept applications for the assistance under the program and make funding decisions on a rolling basis.

*b.* Information on submitting an application under the program may be obtained by contacting the economic development authority. The contact information is:

Iowa Economic Development Authority  
Community Development Division  
200 East Grand Avenue, Des Moines, Iowa 50309  
(515)725-3000

<http://iowaeconomicdevelopment.com/>

**22.3(3) Approval of assistance.** The authority will consider, evaluate, and recommend applications for financial assistance under the program to the director. Authority staff will review applications for financial assistance and score the applications according to the criteria described in rule 261—22.4(15). Recommendations on funding amounts will depend upon the amount of funds available, the quality of the project applying, and the number and quality of the other applications received. Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision. A project that does not receive funding may reapply.

**22.3(4) Contract required.** If the director approves an application for financial assistance under the program, the authority will prepare an agreement stating the terms on which the financial assistance is to be provided, and the applicant shall execute the agreement before funds are disbursed under the program.

**22.3(5) Use of funds.**

*a.* An applicant shall use funds only for purposes 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 purposes of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

*b.* If a city receives financial assistance under the program, the amount of any lien created for costs related to remediation of a property included in a project plan shall not include any moneys that the city received pursuant to this chapter for the remediation of the property. The contract executed pursuant to rule 261—22.5(15) will include a provision implementing this requirement.

**22.3(6) Form of financial assistance.** The authority will provide financial assistance in the form of a loan to the applicant. The amount of the loan, the term, the interest rate, any repayment requirements, and other standard terms shall be included in the contract required pursuant to rule 261—22.5(15).

**261—22.4(15) Program eligibility, application scoring, and funding decisions.**

**22.4(1) Program eligibility.** To be eligible under the program, an applicant shall meet all of the following requirements:

*a.* The applicant shall be a city interested in developing a plan to address issues of slum and blight through the remediation or redevelopment of nuisance properties and abandoned buildings.

*b.* The applicant shall be willing to work with the authority's community development division in the development of the plan described in paragraph 22.4(1) "a."

*c.* The applicant may request an amount of financial assistance in its application, but shall be willing to accept financial assistance in whatever amount and on whatever terms the authority is able to offer, subject to the availability of funds and the prevailing interest rates at the time of application.

*d.* The applicant shall have closed all existing contracts under the program before it is eligible to apply for additional financial assistance. The authority may waive this requirement at its discretion for good cause shown. The authority will not waive this requirement if doing so would adversely impact other applicants.

*e.* The applicant shall submit any information the authority requests in order to evaluate and score the application under the criteria described in this rule.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

**22.4(2) Application scoring criteria.** All applications for financial assistance under the program will be scored according to the following criteria:

*a.* The financial need of the city. 20 points.

For purposes of this criterion, the authority will consider the relative size of the city's budget, the relative scope of the city's problem with nuisance properties and abandoned buildings, and the debt capacity of the city.

*b.* The extent to which the city suffers from severe blighted areas, including the number of nuisance properties and abandoned buildings in a city relative to its size and the extent to which the successful remediation or redevelopment of the properties included in the project plan will reduce or eliminate such blight. 20 points.

For purposes of this criterion, the authority will consider whether the project plan includes areas meeting standard definitions of blight such as in Iowa Code section 403.17 or other state or federal programs. Cities demonstrating more severe blight will receive more points relative to other applicants with less severe blight.

*c.* The extent to which a city suffers from widespread dilapidated housing stock and the extent to which the successful remediation or redevelopment of the properties included in the project plan will reduce or eliminate such dilapidated housing stock. 20 points.

Cities demonstrating more dilapidated housing stock will receive more points relative to other applicants with less dilapidated housing stock.

*d.* The extent to which the city has the organizational strength, financial resources, human resources, and community participation necessary to successfully undertake the remediation or redevelopment described in the project plan. 20 points.

*e.* The number and percentage of low- and moderate-income households in the community. 20 points.

For purposes of this criterion, the authority will consider U.S. Census Bureau data or data collected from a communitywide income survey that meets the requirements of the state's community development block grant program. Cities demonstrating a higher percentage of low- and moderate-income households will receive more points relative to other applicants with lower percentages.

**22.4(3) Funding decisions.** Each application will be scored by staff in the community development division. The scores assigned by all participating staff will be averaged to reflect one numerical score. The application and the averaged numerical score will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the amount of available funding, the numerical score of the application, and the funding recommendation of the community development division staff. The director may approve, deny, or defer funding for any application. The director will not approve funding for an application that receives an average score less than 50 points. A score greater than 50 points does not guarantee that the applicant will receive funding. Each applicant will be notified in writing of the funding decision within 60 days of application unless extenuating circumstances exist.

**261—22.5(15) Contract required.**

**22.5(1)** Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority as evidenced by an executed contract. The contract 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. The authority will develop a standard contract for use in the program, though the contract shall be subject to amendment from time to time as may be necessary to clarify the rights of the parties or to serve the best interests of the state.

**22.5(2)** The parties may amend the contract required pursuant to this rule at any time upon the mutual agreement of both parties.

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**22.5(3)** The contract developed pursuant to this rule may require the successful applicant 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 2015 Iowa Acts, Senate File 499, section 48.

## IOWA FINANCE AUTHORITY[265]

### Regulatory Analysis

**ARC 2128C:** Iowa Administrative Code 265—Chapter 9,  
“Title Guaranty Program”

#### I. Summary.

This Regulatory Analysis has been prepared by the Iowa Finance Authority (IFA) and its division, Iowa Title Guaranty (Title Guaranty or ITG), in response to a request made by the Iowa Land Title Association (ILTA) pursuant to Iowa Code section 17A.4A. This analysis addresses certain statutorily prescribed questions concerning the impact of a rule making proposed by ITG and IFA amending Chapter 9 of IFA's administrative rules, Notice of which was published on September 2, 2015, in the Iowa Administrative Bulletin as **ARC 2128C**. ILTA's request for the Regulatory Analysis was set forth in ILTA's letter, dated September 15, 2015, providing public comment on the noticed rules (ILTA Letter). A copy of the ILTA Letter appears herein as Exhibit A (reproduced as submitted).

This Regulatory Analysis pertains to a proposed amendment of the rules governing the Title Guaranty program, a program created by the legislature to provide a viable alternative to title insurance in the state of Iowa. The program is administered by ITG. The proposed amendment was noticed in the Iowa Administrative Bulletin on September 2, 2015, as **ARC 2128C**. The amendment would strike the entire Chapter 9 and adopt a revised Chapter 9 in its place. Herein, “current rules” refers to the rules currently in effect, and “noticed rules” refers to the rules as proposed in the amendment.

By way of background, the Regulatory Analysis begins by laying out the history of the Title Guaranty program, and explains what the requirements of the program are and what is meant by such important terms as “40-year title plant,” “abstract,” and “waiver.” The Regulatory Analysis goes on to identify and describe pertinent legal precedent concerning the program and the principal issues that have been raised in connection with the current Notice of Intended Action.

The subject matter of the analysis is dictated by Iowa Code section 17A.4A(2)“b,” which requires the agency to address the following five specific questions:

- a. Would it be feasible and practicable to establish less stringent compliance or reporting requirements in the rule for small business?
- b. Would it be feasible and practicable to establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business?
- c. Would it be feasible and practicable to consolidate or simplify the rule's compliance or reporting requirements for small business?
- d. Would it be feasible and practicable to establish performance standards to replace design or operational standards in the rule for small business?
- e. Would it be feasible and practicable to exempt small business from any or all requirements of the rule?

On the first question, the analysis notes that in this case, unusually, the party requesting the analysis, ILTA, is on the record as requesting more stringent compliance requirements than those proposed in the noticed rules. The analysis nevertheless proceeds to enumerate the factors in favor of more stringent compliance requirements and those in favor of less stringent compliance requirements. The analysis concludes that there are more factors in favor of the noticed rules, which state that title plant inspections

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“may” be performed on any title plant, than there are in favor of the current rules which state that title plant inspections “shall” be performed on a small subset of title plants. The analysis does not reach a definite conclusion, however, as there is still a lengthy period during which public comment will be received, and IFA and ITG will consider all comments received before making a final determination on the issue.

On the second question, whether it would be feasible and practicable to establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business, the analysis notes that there are very few deadlines imposed by the noticed rules. The analysis does note that there is at least one deadline that could pose a burden to small businesses: the deadline for applying for waivers. The rules, under certain circumstances, could require a waiver request to wait for nearly six months after the request is filed before it is considered by the ITG Board. The analysis concludes that IFA and ITG are open to the possibility of shortening that time period to reduce the burden on small businesses, and the analysis invites public comment on that issue.

The third statutorily prescribed question of the analysis is: Would it be feasible and practicable to consolidate or simplify the rule’s compliance or reporting requirements for small business? The analysis notes that in their written comments on the noticed rules, some of the affected parties, the operators of 40-year title plants, have come out largely in favor of more extensive compliance requirements (i.e., mandatory inspections), that there have been no comments stating that the compliance requirements are too complex or difficult, and that the noticed rules impose no “reporting requirements.” The analysis concludes that it does not appear that it would be either feasible or practicable to consolidate or simplify the noticed rules’ compliance or reporting requirements for small business.

The fourth question of the analysis is: Would it be feasible and practicable to establish performance standards to replace design or operational standards in the rule for small business? The analysis notes that establishing performance standards to replace design or operational standards is what the title plant waiver process does. The analysis notes that the “operational standard” is the requirement, set by Iowa Code section 16.91, that each abstractor utilize an up-to-date 40-year title plant, and that the “performance standard” is the creation of a proper abstract.

The legislature in 1992 foresaw that it would not be possible or practicable in every situation to require the use of a 40-year title plant. For example, to this day there are Iowa counties with no functioning 40-year title plant; consequently, the legislature created the waiver process and made it available to both attorneys and abstractors to allow businesses, small or large, to abstract without a title plant if (a) the title plant requirement would pose a hardship, and (b) the waiver would be clearly in the public interest or be absolutely necessary to ensure availability of title guaranties throughout the state. Iowa Code § 16.91(5)“b.”

The attorneys and abstractors working without a title plant must of course still meet the applicable performance standards; specifically, they must still produce an abstract that shows all of the relevant interests in and restrictions on the subject piece of property, but they are allowed to do it in a different manner, such as the direct search method described below. Accordingly, there is no reason to attempt to establish performance standards to replace design or operational standards in the rules for small business because the legislature has already done that in the Iowa Code.

The fifth and final question of the analysis is: Would it be feasible and practicable to exempt small business from any or all requirements of the rule? On this point the analysis notes that nearly all of the abstractors who participate in the Title Guaranty program meet the definition of “small business” set forth in Iowa Code section 17A.4A. The approach of ITG and IFA in creating the noticed rules was to assume that all of the businesses to which the noticed rules would apply would be small businesses. It would be very inefficient to have one set of rules that apply to most abstractors and another set that applies to only a very few, if any. In short, IFA and ITG believe it would not be feasible and practicable to exempt small business from any or all requirements of the noticed rules.

Overall, as will be seen below, the issues raised by ILTA in its Talking Points Memo and in the ILTA Letter bear relatively little in common with the questions required to be addressed in the requested Regulatory Analysis. Indeed, on certain issues the Talking Points Memo and the ILTA Letter, on one hand, and the request for a regulatory analysis, on the other, appear to be at cross purposes. For example,

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ILTA and its members appear to be advocating for more stringent compliance requirements while the Regulatory Analysis expressly requires the agencies to consider requiring less stringent compliance.

## II. Introduction.

Pursuant to Iowa Code section 17A.4A, the request for a regulatory analysis automatically extends the time for making public comment on the rule making and the opportunity for a public hearing until the date that is 20 days after the date on which a summary of this analysis is published in the Iowa Administrative Bulletin. A hearing as noticed in the Iowa Administrative Bulletin was conducted on September 22, 2015, to receive public comment; that hearing has been extended, and the concluding portion of the hearing will be held at the offices of the Iowa Finance Authority, located at 2015 Grand Avenue, Des Moines, Iowa, from 1:30 to 2:30 p.m., on December 15, 2015.

Public comment on the noticed rules will be accepted until 4:30 p.m. on December 15, 2015. Comments may be addressed to Tara Lawrence, Director, Iowa Title Guaranty, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Tara Lawrence at (515)725-4901 or e-mailed to [tara.lawrence@iowa.gov](mailto:tara.lawrence@iowa.gov). Copies of this Regulatory Analysis may be obtained online at [www.iowatitleguaranty.gov](http://www.iowatitleguaranty.gov) or at IFA's offices located at the address set forth above.

## III. Background.

### a. Legislative History.

Iowa law prohibits the writing of title insurance within the state of Iowa. See Iowa Code § 515.48(10). The Iowa Supreme Court affirmed this prohibition in Chicago Title Ins. Co. v. Huff, 256 N.W.2d 17 (1977). Because lenders typically sell mortgages on the secondary market, which requires title insurance, "title insurance frequently is sold across the state line to insure interests in property located in Iowa." 1 Patton and Palomar on Land Titles, § 42 (3d. ed.).

Title insurance generally provides more coverage to its insured than a title opinion or abstract. For example, title insurance generally covers forgeries in public records affecting title to a parcel of real estate, while title opinions exclude coverage for forgeries. Id., § 41.

### i. Creation of the Title Guaranty Program.

This need for title insurance for mortgages sold on the secondary market prompted the Iowa legislature to create the Title Guaranty program in 1985 as an alternative to title insurance. When creating the Title Guaranty program, the legislature found that "title guaranties will facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state." Iowa Code § 16.3(15).

The legislature created the Title Guaranty Division as a division of IFA. Iowa Code § 16.91(1); see also, Iowa Land Title Association v. Iowa Finance Authority (and also concerning Charles W. Hendricks), 771 N.W. 2d 399, 401 (2009). The legislature also directed ITG to develop "a guaranty contract acceptable to the secondary market." Iowa Code § 16.91(3). With certain exceptions, title guaranty certificates generally provide coverage similar to the coverage provided by title insurance while preserving the attorney title opinion and abstracting process. Pursuant to Iowa Code section 16.91, rules for the Title Guaranty program are "established" by the Title Guaranty Division and "adopted" by IFA.

### ii. The Iowa Code's 40-Year Title Plant Requirement.

In 1992, the legislature imposed a requirement that participating abstractors must maintain what is known as a 40-year title plant and tract index ("40-year title plant" or "title plant"), unless ITG waives

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that requirement. 1992 Iowa Acts, ch. 1090. Iowa Code section 16.91(5) establishes the 40-year title plant requirement and, at the same time, grants ITG the power to waive this requirement:

Additionally, each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the title guaranty program. . . .

The division may waive the requirements of this subsection pursuant to an application of an attorney or abstractor which shows that the requirements impose a hardship to the attorney or abstractor and that the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state. (Emphasis added.)

Thus, the Iowa Code raises two threshold questions: What exactly is a title plant and what is an abstract? This analysis will address each of these questions in turn.

What is a title plant? In broad terms, a title plant refers to a method of organizing copies of public documents that affect real estate. A title plant includes two groups of documents: (1) the property index, and (2) the general index. Charles B. Sheppard, Assurances of Titles to Real Property Available in the United States: Is a Person Who Assures a Quality of Title to Real Property Liable for a Defect in the Title Caused by the Assured?, 79 N.D. L.Rev. 311, 335 (2003).

The property index includes documents that both affect title to real property and include a legal description of the affected property. Id. An abstractor creates a property index for a tract by searching the documents using the geographic description of the property in question and then by reviewing each document found to determine if the document affects the property in question. Deeds, mortgages, leases, options to purchase, rights of first refusal, and releases are examples of documents included in a property index. Id. Conversely, the general index includes documents that affect title but do not include a legal description of the property. Id. General index documents include judgment liens, tax liens, and bankruptcy petitions. Id.

As an alternative to using a title plant to create an abstract, an abstractor can perform direct searches, using either a physical search of public records or a search of electronic records, or both. Grandfathered or waived attorneys who are participating abstractors generally use this method instead of a title plant.

What is an abstract? An abstractor uses the documents found in the title plant to prepare an abstract of title. An abstract of title gives the prospective purchaser or mortgagee of land “a simplified and convenient method of ascertaining the condition of title to the land without having to make a painstaking search of all of these various records.” Marlin M. Volz, Jr., 1 Ia Prac., Iowa Methods of Practice, § 1:1 (2007 ed.) An abstract of title “consists of a series of pages, each of which contains a summary of the material parts of a recorded or filed instrument affecting title to the property covered by the abstract.” Id. The abstract also includes information about the searches the abstractor performed with respect to judgments, taxes, mechanics’ liens, and other matters of record affecting titles to real property. Id.

Pursuant to Iowa Code section 16.91(5), an abstractor ordinarily must maintain a 40-year title plant to participate in the Title Guaranty program; however, the law also expressly provides that ITG may waive the title plant requirement. The ITG Board may waive the title plant requirement if an attorney or abstractor establishes two conditions: (1) the requirement imposes a hardship; and (2) the waiver clearly is in the public interest or is absolutely necessary to ensure the availability of title guaranties. The ITG Board has long allowed for two kinds of waivers — permanent waivers and provisional waivers. Provisional waivers allow an abstractor to abstract while building a 40-year title plant. The allowance of provisional waivers, while not specifically mentioned in the Iowa Code, is of long standing and is not controversial; ILTA’s policy, for example, is to support provisional waiver requests. See, ILTA Letter, p. 1.

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The law also allows “grandfathered attorneys,” attorneys who provided abstracting services from 1986 to the date of the attorney’s application to participate in the Title Guaranty program, to abstract without a title plant. Iowa Code section 16.91(5). Thus, while the law appears, in the first instance, to require a 40-year title plant in order to abstract within the Title Guaranty program, it actually allows at least six types of abstractors:

- Abstractors with 40-year title plants,
- Abstractors with provisional waivers,
- Attorneys with provisional waivers,
- Grandfathered attorneys,
- Attorneys with permanent waivers, and
- Abstractors with permanent waivers.

As of the date of this analysis, there are 136 participating abstractors with 40-year title plants, 8 abstractors with provisional waivers who are in the process of building a title plant, 0 attorneys with provisional waivers, 38 grandfathered attorneys, 11 attorneys with permanent waivers, and 0 non-attorney abstractors with permanent waivers. Working with these 193 individuals and entities, in the last fiscal year ITG issued 63,881 title guaranty certificates for real estate transactions totaling over \$10.4 billion in the aggregate. Of those certificates, approximately 23 percent were issued based on abstracts prepared without the use of a title plant.

b. Relevant Case Law.

Since the creation of the Title Guaranty program, there have been at least two appellate cases decided that have interpreted the statutes underlying the program. These decisions affect how those statutes may be implemented in the administrative rules.

In Berger v. Iowa Finance Authority, 593 N.W.2d 136, (Iowa 1999), the Iowa Supreme Court addressed the issue of geographic limitations on grandfathered attorneys. That issue appears to be noncontroversial at this point and is not at issue in the current rule making.

Subsequently, in Iowa Land Title Association v. Iowa Finance Authority (and also concerning Charles W. Hendricks), 771 N.W. 2d 399 (2009), the Supreme Court interpreted the waiver provision of Iowa Code section 16.91(5). In that case, ILTA challenged the ITG Board’s approval of a statewide title plant waiver for attorney Charles Hendricks. The primary issue on appeal was whether the ITG Board correctly construed the waiver provisions of §16.91(5). Hendricks at 401.

The terms “hardship” and “public interest” were not defined in the Title Guaranty program rules until after the Hendricks litigation was underway. First the Court determined that since the legislature did not modify the word “hardship” in the statute, an applicant can show a hardship by the word’s ordinary definition. The Court looked in Webster’s dictionary and Black’s Law Dictionary to determine the meaning of hardship. The Court concluded that hardship “...means suffering, privation, or adversity. A financial hardship alone can create privation, suffering, or adversity.” Hendricks at 403.

The Court in Hendricks then reviewed the definition of “public interest,” which, like the term “hardship,” was not defined in the rules until after the Hendricks litigation started. The Court again looked to the statute and found that the legislature did not define the term. Hendricks at 403. However, after reviewing the legislative findings for the purpose of the Title Guaranty program (§16.3(15)) and the mission statement of ITG, the Court found the ITG Board’s interpretation of public interest to be consistent with the intent of the legislature. Id. The Court stated that making title guaranty more competitive with title insurance serves the public interest by decreasing the use of title insurance. Hendricks at 404.

c. Current Rule Making.

On August 5, 2015, the Iowa Finance Authority Board of Directors approved a Notice of Intended Action to begin the process of revising the rules governing the Title Guaranty program. The Title Guaranty Division had determined that the ITG rules needed to be updated due to inconsistencies in

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the rules and inconsistencies between the rules and the Iowa Code. The rules had been amended over the years, and had begun to suffer from a lack of internal consistency, and they failed to address certain issues, such as whether legal entities, as opposed to individuals, are eligible to apply for title plant waivers.

The proposed amendment was published in the Iowa Administrative Bulletin on September 2, 2015, as **ARC 2128C**; the noticed amendment would strike the entire Chapter 9 and adopt a revised Chapter 9 in its place. The Notice of Intended Action was addressed at the Administrative Rules Review Committee's meeting on September 8, 2015. Following publication of the Notice, IFA began to receive public comments. On September 22, 2015, as noticed in the Iowa Administrative Bulletin, a public hearing was held to receive additional public comment.

The principal issues that have generated public comment with respect to this rule making are the definitions of the terms "hardship," "public interest," and "participating abstractor" and the change of language that says ITG "shall" conduct title plant inspections in certain cases to language that says ITG "may" conduct title plant inspections. IFA has received numerous comments from ILTA members on these points, most of which have been consistent with a "talking points" memo circulated by ILTA to its membership on or about September 16, 2015 (Talking Points Memo).

Public comment has also been received from abstractors and attorneys who are generally in favor of the proposed changes; some of the public comments proposed various modifications. The written public comment received by IFA regarding the noticed rule making is posted to ITG's Web site at [www.iowafinanceauthority.gov/TitleGuaranty/DocumentSubCategory/145](http://www.iowafinanceauthority.gov/TitleGuaranty/DocumentSubCategory/145) under the heading "Public Notices."

A summary of the principal issues raised in the public comments received so far may be helpful to an understanding of the issues overall and of this analysis:

i. The Definitions of "Hardship" and "Public Interest."

Despite the fact that in 2009 ILTA lost the Hendricks case it had filed, and regardless of the Iowa Supreme Court's ruling therein, it is still the policy of ILTA to oppose all requests for statewide waivers. ILTA Letter, p. 1. Likewise, ILTA continues to insist that the terms "hardship" and "public interest," as used in the rules and in Iowa Code section 16.91(5), should be defined more stringently. ILTA Letter, pp. 2-3. However, the definitions of those terms were expressly addressed by the Iowa Supreme Court in Hendricks. See, 771 N.W.2d 402-403.<sup>1</sup> While ILTA specifically urges IFA to define "hardship" to have the same meaning as the term "undue hardship" used in Iowa Code section 17A.9A (see, ILTA Letter, pp. 2-3 – urging adoption of the reasoning of a 2007 Iowa District Court decision), that interpretation was expressly considered and rejected in 2009 by the Iowa Supreme Court in Hendricks, and unless the legislature amends Iowa Code section 16.91(5), IFA and ITG are simply not free to disregard the Iowa Supreme Court's decision.

The position of IFA and ITG on this point is consistent with a document posted on ILTA's Web site entitled "Written remarks provided to ILTA by Attorney James Gilliam regarding the decision filed by the Supreme Court of Iowa on August 21, 2009 (No. 08-0133)" [i.e., the Hendricks case]. Mr. Gilliam represented ILTA in the Hendricks case. The document states in part:

The primary focus of our appeal, to get the court to define the terms "hardship" and "public interest", were purely legal issues. . . . Unfortunately, the court sided with ITG on that part of the appeal. . . .

Going forward, ILTA's only remedy on the statutory interpretation issue is legislative. That is, I doubt that there are any circumstances under which the Supreme Court would reverse its decision on the meaning of the terms "hardship" or ["public interest", so you would need the legislature to tighten up that loophole. . . .

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See, <http://www.iowalandtitle.org/documents/Gilliams%20Remarks%20on%20Ruling%20090409.pdf> (Retrieved by Google search, October 6, 2015).

Given that ILTA has previously appealed this issue to the Iowa Supreme Court and lost, and that its own attorney apparently has advised ILTA that its only remedy is legislative, it is difficult to understand the basis on which ILTA continues to insist that the noticed rule's definitions of "hardship" and "public interest" are incorrect or that, in the absence of new legislation, ITG and IFA even have the option to adopt the definitions ILTA is putting forward.

ii. The Definition of "Participating Abstractor."

The noticed rules change the definition of "participating abstractor." In the current rules the definition reads as follows:

*"Participating abstractor"* means an abstractor who is authorized to participate in the title guaranty program and who is in full compliance with the abstractor's participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division.

In the noticed rules the following definition is set forth:

*"Participating abstractor"* means a person who is authorized by the division to prepare abstracts for division purposes.

Additionally, the noticed rules propose a definition for the term "person," based on section 4.1(20) of the Iowa Code:

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

The objection to these proposed changes by ILTA and at least some of its members is summed up in ILTA's Talking Points Memo, which states, in part:

**The rule making re-defines "participating abstractor"**

- Changes the definition from "abstractor" to "person" which is defined in the rule and by Code to include "legal entity, including corporation, limited liability company, partnership", allowing for an entity to now receive a waiver – prior to now, waivers have been primarily given to individual attorneys

Many of the comments that have been received to date deal with the issue of corporate entities receiving waivers. The Talking Points Memo is only partially correct in its assertion that previously waivers have been primarily given to individual attorneys. Specifically, permanent waivers have been given primarily to attorneys; however, dozens of provisional waivers have been granted to corporate entities over the years. The Iowa Code provision that allows for waivers, section 16.91(5), makes it clear that waivers may be given to both attorneys and abstractors. As far as IFA and ITG are aware, all of the non-attorney abstractors in this state, including all of ILTA's non-attorney abstractor members, operate as corporate entities (including LLCs) and not as individuals.

Because non-attorney abstractors are invariably organized as corporate entities, it would be illogical to interpret Iowa Code section 16.91(5), which specifically allows the ITG Board to grant a waiver to "an attorney or abstractor," to exclude corporate entity abstractors, because there effectively are no non-attorney abstractors who are not corporate entities. Until recently, the ITG Board had never been faced with a request for a waiver from a non-attorney abstractor, but the provision allowing the granting of waivers to an attorney or abstractor has been part of the Iowa Code since 1992.

### iii. Mandatory Versus Discretionary Title Plant Inspections.

Another issue raised in ILTA's Talking Points Memo, and by a number of its members in their public comments, is the change to the language dealing with title plant inspections for abstractors granted provisional waivers.<sup>2</sup> Current 265—subrule 9.7(10) states: "*Title plant certification.* For applicants granted a provisional waiver, an inspection of the title plant shall be performed by division staff or a designee of the title guaranty director." (Emphasis added.) Noticed 265—subrule 9.6(12) provides: "An inspection of a title plant may be performed by the division or its designee to determine if the title plant meets the criteria set forth in paragraph 9.7(1) 'a'." (Emphasis added.) Thus, the current rules mandate title plant inspections while the noticed rules make such inspections optional on the part of ITG. Notably, unlike the current subrule, the noticed subrule is not limited to abstractors with provisional waivers, but would apply to all abstractors with title plants.

ILTA's Talking Points Memo asserts that "[t]he rule making eliminates inspections of title plants," and both ILTA and many of the comments received from ILTA's membership on this issue are opposed to the "elimination" of the title plant inspections. As will be discussed below, this opposition places ILTA and some of its members in the odd position of insisting on more regulation and compliance inspection than proposed by the rule-making agency. Needless to say, this is an unusual position to be taken by an organization that represents small businesses. Also, it should be pointed out that the rule making does not "eliminate" inspections; it merely makes them optional.

It is also worth noting that, as disclosed in ILTA's Talking Points Memo, ILTA is currently under contract with ITG to perform the title plant inspections and would presumably lose revenue if fewer inspections were performed. However, as discussed below, it is by no means clear that fewer inspections would be performed under the noticed rules than under the current rules. Finally, a number of abstractors have informed the ITG Director that they are in favor of the noticed change, so it would appear that ILTA is not speaking for all of its membership in raising this particular "talking point."

## IV. Statutory Requirements of the Regulatory Analysis.

Section 17A.4A of the Iowa Code provides for two different forms of regulatory analyses that must be performed under certain conditions. The first is pursuant to Iowa Code section 17A.4A(2) "a." This form of regulatory analysis must be performed if requested by the Administrative Rules Review Committee or the Administrative Rules Coordinator. The other form of regulatory analysis, pursuant to Iowa Code section 17A.4A(2) "b," must be created if requested in writing by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least twenty-five persons signing that request who each qualify as a small business, or by an organization representing at least twenty-five such persons.

Here, because ILTA, which IFA and ITG believe represents at least twenty-five small businesses, has requested a regulatory analysis, the form of regulatory analysis prescribed by Iowa Code section 17A.4A(2) "b" is required. That form of regulatory analysis is limited to a discussion of five specific questions set forth in that subsection of the Iowa Code. These questions will be considered in turn below.

## V. Analysis.

It should be noted at the outset that the rules in question are not "regulatory" in the normally understood sense of that word, as no one is required to comply with them in order to abstract. The rules apply only if an abstractor wishes to do business with ITG by participating in the Title Guaranty program. Abstractors in Iowa can and do prepare abstracts in many contexts outside that program, such as for title insurance companies that sell across the state line (although ITG is obviously not in favor of that practice), for attorneys foreclosing on property, for sales of agricultural land, and so forth. The noticed rules would not apply to abstractors in any of those situations. Thus, the rules are voluntary in that any abstractor can simply choose not to participate in the program.

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Moreover, it is not clear that the noticed rules will have a “substantial impact” on small businesses, as the noticed rules are in most respects consistent with the current rules and do not impose any burdens on small businesses that are not required or strongly implied by the Iowa Code. If a non-attorney abstractor is granted a permanent waiver, for example, ITG would maintain that it is not because of the noticed rules, but rather because of language that has been part of the Iowa Code since 1992. Nevertheless, in order to avoid any more delays to the rule-making process, and in the interest of openness, IFA has prepared this Regulatory Analysis as if the noticed rule making would have a substantial impact on small businesses. The five statutory questions, and IFA’s analysis of each, are as follows:

**a. Would it be feasible and practicable to establish less stringent compliance or reporting requirements in the rule for small business?**

The noticed rules have only one relatively short subrule 9.6(12) that deals with compliance and, in its entirety, states as follows:

**9.6(12) Compliance.** Participants shall comply with the Code of Iowa, these rules, the participation agreement, manuals, and any other written or oral instructions of the division. The division may audit the participant, with or without notice, for verification of compliance. An audit may include, but not be limited to, a review of the participant’s commitment and certificate issuance procedures, a test of title plants and tract indices, and a review of closing policies and procedures and escrow account details. An inspection of a title plant may be performed by the division or its designee to determine if the title plant meets the criteria set forth in paragraph 9.7(1) “a.”

As noted above, the most significant change of this noticed subrule from the current subrule is to eliminate mandatory inspections of title plants operating pursuant to a provisional waiver in favor of optional (on the part of ITG) inspections of all title plants. Clearly, inspections that “may” take place have the potential to prove less burdensome to small businesses than inspections that “shall” take place.

ITG and IFA believe (though they do not possess information to determine with certainty) that the vast majority of abstractors participating in the Title Guaranty program meet the definition of “small business” set forth in Iowa Code section 17A.4A(8). If different compliance standards were created for small businesses and non-small businesses, the latter standard might apply to only a few or perhaps no abstractors. Adopting one set of rules for abstractors who are small businesses and another set for other abstractors would likely not be a feasible and practicable method of ensuring compliance because creating and maintaining a standard that would never or almost never apply would be an inefficient use of resources, particularly when no one has complained that the current standard is too strict or burdensome.

An analysis of whether it would be “feasible and practicable” to establish less stringent compliance requirements that would apply to all abstractors, including small businesses, requires weighing several factors. Among the factors in favor of retaining the current subrule on compliance (265—subrule 9.7(10)), which states that in the case of abstractors with provisional waivers, “an inspection of the title plant shall be performed by division staff or a designee... (currently ILTA),” are the following:

- There have been no complaints that the current requirement is excessive or overly burdensome. The inspections are performed with as little disruption as possible to the abstractor’s business.
- The mandatory language of the current subrule could potentially result in more inspections being performed (at least for the abstractors covered thereby), which would increase the likelihood of detecting defects in abstractors’ methods or their work product for the abstractors whose plants are inspected.
- There would be less likelihood of claims associated with the inspected title plants and, thus, greater protection of the public.

It should be emphasized, however, that the current title plant inspection requirement applies only to abstractors with provisional waivers who are in the process of building a title plant (currently there are eight such provisional waivers in effect), whereas the noticed subrule would permit (but not mandate) inspections of any participating abstractor with a title plant. Therefore, there is the potential that the noticed subrule could conceivably result in more inspections than under the current subrule. The

IOWA FINANCE AUTHORITY[265](cont'd)

limitation of the current subrule to abstractors with provisional waivers also means that the majority of title plants undergo no inspection at all under the current subrule. An additional consideration to take into account is the possibility that more stringent inspection requirements could induce abstractors to seek a waiver of the title plant requirement and thereby avoid the inspection requirement altogether.

The factors in favor of adopting the noticed subrule are as follows:

- No commenters have stated that they think the compliance requirements set forth in noticed subrule 9.6(12) are excessive, and the requirements of the noticed subrule appear to be generally regarded by the public commenters as a relaxation of the requirements of the current rules.

- Having the option to inspect could allow ITG to focus its compliance resources on newer title plants or those that have been shown to have problems of some sort, rather than performing mandatory inspections of title plants where there is no reason to suspect any problem. This factor may make this option more practicable.

- The noticed subrule would also allow ITG to choose from a much larger pool of title plants when deciding where to conduct inspections.

- Iowa Code section 17A.4A(2)“b,” which sets out the regulatory analysis process, appears to indicate a legislative preference for less stringent compliance requirements for small businesses where such are feasible and practicable. As noted, the consensus among the public commenters appears to be that the noticed subrule is less stringent than the current subrule, and would therefore tend to be more in line with the legislative preference of minimal compliance requirements where feasible.

IFA and ITG will consider all of these factors, as well as any additional written or oral public comment that is received (the request for the Regulatory Analysis automatically extends the comment period), but currently it would appear that the factors in favor of adopting the noticed subrule outnumber those in favor of retaining the current subrule.

**b. Would it be feasible and practicable to establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business?**

The noticed rules do not set any particular schedule for compliance. Neither the current rules nor the noticed rules, for example, dictate how frequently or by what time the title plant inspections referred to in the preceding section should be commenced or completed. Further, there have been no complaints that schedules or deadlines for compliance or reporting requirements under the noticed rules are too stringent.

In fact, the only “deadlines” in the rules that can be considered as being in some way related to compliance or reporting are the filing dates associated with the title plant waiver application process in noticed paragraph 9.7(1)“d”(4)“4.” That paragraph in the noticed subrule states:

If a complete application is received at least 90 days prior to the next scheduled division board meeting, the application shall be placed on the agenda for that division board meeting. The division shall receive public comments up to 45 calendar days prior to that division board meeting.

The 90-day time frame set forth in this part of the noticed subrule is not a true deadline, in that if it is missed, the would-be applicant is not barred from applying; the applicant merely must wait until the next scheduled ITG Board meeting to receive a ruling on its application. However, because the ITG Board generally meets only once per quarter, the 90-day lead time could be burdensome to some small businesses requesting a waiver.

There have been no complaints received that the 90-day period is too long, but as a result of performing this analysis, ITG and IFA have concluded they should consider looking into ways to shorten that time line to eliminate some of the burden to small businesses associated with applying for a title plant waiver. Iowa Code section 17A.4A(2)“c” provides that:

IOWA FINANCE AUTHORITY[265](cont'd)

The agency shall reduce the impact of a proposed rule that would have a substantial impact on small business by using a method discussed in paragraph “b” if the agency finds that the method is legal and feasible in meeting the statutory objectives which are the basis of the proposed rule.

In other words, if, as here, a Regulatory Analysis is requested and the rule-making agency finds that it could reduce a substantial impact on small business by adopting one of the five methods discussed in Iowa Code section 17A.4A(2) “b,” then the agency must adopt that method. IFA and ITG look forward to reviewing any public comment that may be received on this point during the extended public comment period. A possible consequence of easing the deadline for applying for a waiver is that more businesses will apply, which could result in a greater percentage of participating abstractors abstracting without a title plant.

**c. Would it be feasible and practicable to consolidate or simplify the rule’s compliance or reporting requirements for small business?**

As noted above, the compliance requirements of the rules, both current and noticed, are not extensive, and the affected parties, the operators of 40-year title plants, have come out largely in favor of more extensive compliance requirements (i.e., mandatory inspections). There have been no comments stating that the compliance requirements are too complex or difficult. The compliance requirements (title plant inspections) are not amenable to consolidation or to simplification in any event, and there are no “reporting requirements” set forth in the noticed rules, and a reporting requirement cannot be made any simpler than that. Accordingly, it does not appear that it would be either feasible or practicable to consolidate or simplify the noticed rules’ compliance or reporting requirements for small businesses.

**d. Would it be feasible and practicable to establish performance standards to replace design or operational standards in the rule for small business?**

Establishing performance standards to replace design or operational standards is precisely what the title plant waiver process is about. The operational standard in this case is the requirement that each abstractor “own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division.” That operational standard is set by Iowa Code section 16.91. The legislature in 1992 seemingly anticipated this analysis question by essentially allowing performance standards to apply in lieu of the operational norm (i.e., the 40-year title plant) in certain cases. In other words, the legislature foresaw that it would not be possible or practicable in every situation to require the use of an abstract created from a 40-year title plant. For example, to this day there are Iowa counties with no functioning 40-year title plant.

Because creating a title plant is an expensive and lengthy proposition, it is a substantial burden for a small business to create one, although certainly there are small businesses that continue to do so. The legislature, in 1992, at the same time it created the title plant “requirement,” also created the waiver process and made it available to both attorneys and abstractors to allow businesses, small or large, to abstract without a title plant if (a) the title plant requirement would pose a hardship, and (b) the waiver would be clearly in the public interest or be absolutely necessary to ensure availability of title guaranties throughout the state. Iowa Code § 16.91(5) “b.” Of course, the attorneys and abstractors working without a title plant must still meet the applicable performance standards and must still produce an abstract that shows all of the relevant interests in and restrictions on the subject piece of property; however, they are allowed to do so in a different manner, such as the direct search method described above. Thus, here the “performance standard” is the creation of a proper abstract.

Accordingly, while IFA and ITG will continue to consider all public comment on the issue, it appears there is no reason to attempt to establish performance standards to replace design or operational standards in the rules for small business in this case, because the legislature has already done that in the Iowa Code.

IOWA FINANCE AUTHORITY[265](cont'd)

The role of IFA and ITG is to implement that legislation in the administrative rules. The law plainly allows waivers for both attorneys and abstractors. While until recently the ITG Board had considered permanent waiver requests only from attorneys, that fact does not change the fact that the law expressly allows abstractors to apply for a waiver. The noticed rules simply clarify that non-attorney abstractors (which are invariably set up as corporate entities) may apply, as the current rules are not clear on that point.

**e. Would it be feasible and practicable to exempt small business from any or all requirements of the rule?**

To the best of IFA's and ITG's knowledge, nearly all of the abstractors who participate in the Title Guaranty program meet the statutory definition of "small business" set forth in Iowa Code section 17A.4A. Accordingly, it would not make sense to adopt one set of standards for small businesses and another for other businesses as the latter standards would likely apply to very few abstractors, if any. The approach of ITG and IFA in creating the noticed rules was to assume that all of the businesses to which the noticed rules would apply would be small businesses. None of the public comment received to date has suggested that small businesses should be exempted from any of the noticed rules. Simply put, IFA and ITG believe the answer to this question is "no."

**VI. Conclusion.**

As a result of this analysis, ITG and IFA shall consider, subject to further public comment received, the possibility of including mandatory title plant inspections (at least in some circumstances) and possibly easing the time line for requesting a waiver of the title plant requirement in the noticed rules upon final adoption. For the reasons stated above, ITG and IFA do not at this time plan to attempt to consolidate or simplify the compliance or reporting requirements of the noticed rules for small business or to exempt small business from any or all requirements of the noticed rules. Also as noted above, ITG and IFA believe it is unnecessary to attempt to establish performance standards to replace design or operational standards in the noticed rules for small business because the statutorily provided waiver process does that already.

The short-term consequences of the noticed rules should be increased clarity and ease of understanding. While some aspects of the noticed rules dealing with title plant waivers are unpopular with some stakeholders, the fact is that those aspects are consistent with the Iowa Code. The Iowa Supreme Court has already ruled that the definitions of "hardship" and "public interest" set forth in the noticed rules are correct. The availability of title plant waivers to abstractors has been expressly provided for in the Iowa Code since 1992. While the Iowa Code does not expressly state that corporate entities may receive waivers, neither does it proscribe such waivers. Moreover, non-attorney abstractors are invariably set up as corporate entities, so it would be nonsensical to state that abstractors may receive waivers, but corporations or LLCs may not. The noticed rules will also allow ITG to perform title plant inspections on all participating title plants instead of just those being operated pursuant to a provisional waiver, which should lead to better service for lenders and homebuyers.

The long-term consequences of the noticed rules should be greater conformance with the Iowa Code provisions dealing with ITG as passed by the legislature. For example, previously the title guaranty rules did not address waiver requests by abstractors even though the Iowa Code has for many years expressly provided that abstractors may be given waivers. The lack of rules in that area likely had an inhibiting effect on abstractors and is likely at least part of the reason why there are no abstractors with permanent waivers at this time.

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<sup>1</sup> The Supreme Court's decision on these points is quoted in pertinent part below:

**V. Construing the Term "Hardship."**

IOWA FINANCE AUTHORITY[265](cont'd)

The [ITG] board determined the term “hardship,” as used by the legislature in section 16.91(5), did not require a “hardship of an extraordinary magnitude or type.” Consequently, it found a “financial hardship alone can constitute hardship.” The association [ILTA] claims something more than a financial hardship is required.

Neither the Iowa Code nor the Administrative Code in place at the time of the board’s decision defined the term “hardship” as used in section 16.91(5). When the legislature used the term “hardship” in section 16.91(5), it did not qualify the term. The legislature knows how to modify the word, “hardship,” and has done so in many instances. *See, e.g.*, Iowa Code §§ 2C.18 (referring to a “needless hardship”), 13.15 (referring to a “financial hardship”), 17A.9A(2)(a) (referring to an “undue hardship”), 138.12(2) (referring to an “unnecessary hardship”), 232.69(3) (e) (referring to a “significant hardship”), 425.37 (referring to an “unreasonable hardship”), 554.3513(2) (referring to an “economic hardship”), 607A.6 (referring to an “extreme hardship”), 815.9(1) (b) (referring to a “substantial hardship”), 904.902 (referring to a “physical hardship”). Without any modification of the word “hardship” by the legislature, we must assume the legislative intent in section 16.91(5) was to allow the board to grant a waiver if the applicant can show a “hardship” in the sense that the word is ordinarily used and understood.

“Hardship” as defined in the dictionary means privation or suffering. *Webster’s Third New International Dictionary* 1033 (unabr. ed. 2002). Black’s Law Dictionary defines “hardship” as privation, suffering, or adversity. *Black’s Law Dictionary* 734 (8th ed. 2004). Therefore, “hardship” as contained in this section means suffering, privation, or adversity. A financial hardship alone can create privation, suffering, or adversity. Thus, we agree with the board’s construction of section 16.91(5) that a financial hardship is a hardship sufficient to justify a waiver under the statute.

#### **VI. Construing the Meaning of “Public Interest.”**

The Code allows the board to grant a waiver of the requirement that a participating abstractor have a title plant upon a showing of hardship and a showing that the waiver clearly is in the public interest. Iowa Code § 16.91(5). The board determined the granting of the waiver in this case was clearly in the public interest. The board identified five public interests that granting this waiver would effectuate. First, granting the waiver would increase competition among abstractors. Second, it would encourage the use of the title guaranty program throughout Iowa. Third, it would make the title guaranty program more competitive with out-of-state insurance. Fourth, it would improve the quality of the land title system. Fifth, it would protect consumers.

The association claims the legislature did not contemplate these public interests as reasons to waive the title plant requirement. Therefore, it claims, the board misinterpreted the statute when it relied upon these public interests to waive the title plant requirement.

The legislature did not define “public interest” when it enacted the title guaranty program. It did indicate, however, the purpose of the program in its legislative findings. Iowa Code § 16.3(15). The legislature stated:

The abstract-attorney’s title opinion system promotes land title stability for determining the marketability of land titles and is a public purpose. A public purpose will be served by providing, as an adjunct to the abstract-attorney’s title opinion system, a low cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties will facilitate mortgage lenders’ participation in the secondary market and add to the integrity of the land-title transfer system in the state.

*Id.* Consistent with these legislative findings, the Iowa Title Guaranty Division declared its mission

IOWA FINANCE AUTHORITY[265](cont'd)

is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state.

Iowa Admin. Code r. 265 — 9.2.

After our review of the legislative findings and the mission statement of the division, we agree that the public interests as set forth by the board were consistent with the intent of the term "public interest" under section 16.91(5). By increasing competition among abstractors, the title guaranty program can drive down prices of abstracts making Iowa's abstract-attorney's title opinion system more cost efficient. Encouraging the use of the title guaranty program adds to the integrity of the land-title transfer system, thereby helping its consumers. Making the title guaranty program more competitive with out-of-state title insurance serves the public interest by decreasing the use of title insurance. Improving the quality of the land-title system serves the public by adding to the integrity of the title guaranty program and better serving its customers. Finally, protecting consumers serves the public interest.

Accordingly, we agree with the board's construction of the meaning of "public interest."

<sup>2</sup> On this point, the Talking Points Memo stated:

**The rule making eliminates inspections of title plants**

- Changes from "shall" in old rule 9.7(10) to "may" in new rule 9.6(12)
- If Iowa Title Guaranty decides to make no inspections, how is the public served or protected?
- If title plants are not inspected, this increases the State's claims exposure
- ***Full disclosure:*** *ILTA has a three-year contract w/Iowa Title Guaranty Division to inspect title plants*

Exhibit A



## *Iowa Land Title Association*

P.O. Box 444 • Carroll, IA 51401 • 800.778.3789 • ILTA@austin.rr.com

September 15, 2015

Tara Lawrence  
Iowa Title Guaranty  
2015 Grand Ave.  
Des Moines, IA 50312

RE: Notice of Intended Action to amend Chapter 9, "Title Guaranty Division," Iowa Administrative Code

Dear Ms. Lawrence:

I am writing to you on behalf of the board of directors of the Iowa Land Title Association, which represents 140 members throughout Iowa. The purpose of this letter is to comment upon the proposed amendments to Title 265, Chapter 9, Iowa Administrative Code.

### **General and Introductory Comments on Proposed Rules**

It is the policy of the ILTA to oppose any applications for statewide waivers, and to support applications for provisional waivers for people that are building a title plant for a specified county. This position is unlikely to change.

As you know, the legislature specifically required that a title plant be used and maintained for the issuance of title guaranty certificates.<sup>1</sup> We agree with the sentiment expressed in the proposed rules that "the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates."<sup>2</sup>

We understand that there are limits upon Iowa Title Guaranty's authority to interpret the law.<sup>3</sup> This does not mean that the agency cannot define terms, but rather, it means that a court may correct "errors at law," if there are errors to be found. Iowa Title Guaranty successfully convinced the Iowa Supreme Court that it had not made such errors,<sup>4</sup> but the court-approved definitions remain substantively lacking. While the Division has used application forms to draw out some information, the Iowa Administrative Rules should be used to describe the evidence necessary to sustain a waiver.

Having applied criteria that have been sustained by the courts does not mean that the terms cannot be further refined. The primary problem with the old rules and the new rules, which are nearly identical with respect to the hardship and public interest tests, is that they lack any metrics or method of analyzing the metrics to decide whether the tests and definitions are satisfied. Respectfully, we believe that Iowa Title Guaranty has not adequately set out important definitions or provided adequate guidelines for obtaining a title plant waiver.

The Iowa Land Title Association believes that the proposed rules do not adequately or accurately set out the elements required to obtain a title plant waiver. The lack of metrics and the lack qualitative analysis required in order to sustain or deny an application will allow board decisions based on unspecified facts on title plant waivers that expose the board to future litigation over these waivers on the grounds that they are essentially arbitrary and contrary to law.<sup>5</sup>

### Specific Comments on Proposed Rules

The Iowa Land Title Association has the following specific comments and issues with the proposed rules:

1. The proposed rules do not describe the types of information necessary to sustain an application for a title plant waiver. Proposed Rule 9.7(1)(d)(3)(8) leaves entirely to the applicant to propose “relevant facts that the applicant believes would justify a waiver.”<sup>6</sup> Proposed Rule 9.7(1)(d)(3) omits from the list of factors any type of information that would tend to show, for example, (a) the conditions in the market; (b) full disclosure of applicant’s financial situation, (c) the actual costs of the title plant requirement, and (d) an analysis of effects on other regulated parties.
2. The proposed rules do not describe the type and degree of “substantial evidence” necessary to sustain an application for a title plant waiver. Proposed Rule 9.7(1)(d)(6)(4) leaves the “final decision on whether the circumstances justify the granting of a waiver ... at the sole discretion of the division board upon consideration of all relevant factors.” The relevant factors include “the facts and circumstances set out in the application.” Nowhere in the rules is there a set of qualitative or quantitative factors that the Iowa Title Guaranty staff or board is to apply.
3. Proposed Rule 9.7(1)(d) appears to adopt an improper new balancing test: “The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service, and a competitive price.” This new test is contrary to the expressed statutory preference for a title plant,<sup>7</sup> and should be stricken out. The only expressed purpose of the title guaranty program is “providing, as an adjunct to the abstract-attorney’s title opinion system, a low cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties will facilitate mortgage lenders’ participation in the secondary market and add to the integrity of the land-title transfer system in the state.”<sup>8</sup>
4. Proposed Rule 9.7(1)(d)(6)(4) lacks reference to the proper standards for considering the proposed waivers and should be revised to incorporate these expressly. As required under the Administrative Procedures Act and district court rulings, the board must conduct qualitative analysis of the “substantial evidence” particularly applying the “clear and convincing evidence.”<sup>9</sup>
5. Proposed Rule 9.7(1)(d)(5)(3) is inadequate in its description of what is and is not acceptable and substantial evidence of “hardship” under the statute. Specifically:
  - 5.1. The proposed rule should expressly adopt the statutory requirement of proof of an “*undue* hardship.”<sup>10</sup> Iowa Code § 17A.9A(2)(a) unequivocally requires the board to use a higher standard that it has traditionally applied.

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**5.2.** The proposed rule should expressly adopt a statement that the mere existence of costs of the creation or maintenance of a title plant is not sufficient evidence of hardship. Given the board's previous interpretation that a financial hardship alone may be deemed sufficient, the lack of a specific statement in the rule creates a false assumption that any capital outlay may be deemed a hardship. This is contrary to the law.<sup>11</sup> As one court has said: "Business start-up costs are unavoidable and in our free market cannot be characterized as imposing an undue hardship merely because they are somewhat high. Rather it must be shown that the costs are so great that they will cause an excessive or unwarranted deprivation to the person incurring the cost."<sup>12</sup>

**5.3.** Furthermore, the rule should require that the qualitative and quantitative analyses be provided for each county for which a waiver is sought. Adoption of this standard is necessary to address those applicants that would hold up the cost of obtaining a title plant in two or 99 counties as an impediment to complying with the statute.

We have attached to this letter as Exhibit A, a proposed revision to Proposed Rule 9.7(1)(d)(5)(3).

**6.** Proposed Rule 9.7(1)(d)(5)(4) continues to be inadequate in describing the "public interest" test based on six of the seven criteria used previously and cited by the Iowa Supreme Court.<sup>13</sup> There is no reason that the criteria should not be qualitatively and quantitatively described. The criteria should have substance and weight.

**6.1.** The last criteria listed, "protecting consumers," should be first and foremost and weighted heavily in favor of consumers, and especially those individuals having little understanding of title matters.

**6.2.** The criteria of "increasing competition among abstractors" is a meaningless criteria and adds nothing to the analysis of whether public interest will be served. Our members do not need protection from competition. There is healthy competition in small markets and large markets throughout the state. Nevertheless, every applicant can state unequivocally that the applicant will increase competition if the applicant commences operations. The condition will be true in every case. That meaningless criteria should be stricken and replaced with a qualitative analysis of whether the market conditions are somehow demonstrably in need of change and the statutorily required analysis of how that change will affect other regulated parties.<sup>14</sup>

**6.3.** The criteria of "improving the quality of land titles" is nebulous and should be replaced with an analysis of how the applicant can ensure the integrity of land titles. This is the expressed legislative intent of the attorney-abstract system.<sup>15</sup> The applicant should describe, in detail, how the applicant will ensure that proper abstracting standards can and will be upheld in the absence of a title plant.

**6.4.** Furthermore, the rule must require that applicant produce evidence for each county for which a waiver is sought. Conditions vary greatly across the state, and the board cannot reasonably act upon a waiver application that treats all of the counties in the state or region as the same.

We have attached to this letter as Exhibit B, a proposed revision to Proposed Rule 9.7(1)(d)(5)(4).

IOWA FINANCE AUTHORITY[265](cont'd)

7. Proposed Rule 9.1 inappropriately changes the definition of “participating abstractor” broadening the scope of the definition. Iowa Land Title Association believes that the present rule is correct. We suggest that the proposed rule be modified as follows:

“Participating abstractor” means ~~AN ABSTRACTOR—a person who~~ IS ENGAGED IN THE PRACTICE OF SEARCHING PUBLIC RECORDS FOR THE PURPOSE OF CREATING ABSTRACTS OF TITLE TO REAL PROPERTY IN IOWA AND WHO is authorized by the division to prepare abstracts for division purposes.

8. Proposed Rule 9.7(1)(d)(7) lacks a mechanism for accountability for waivers. It is fundamental to the mission of Iowa Title Guaranty to provide title assurance while controlling risk. Iowa Land Title Association does not favor any change in the rules allowing for waivers to an entity, but if a waiver were considered, it would have to be tied to a principal individual abstractor and ensuring that the waiver will be reviewed. It is necessary to tie a waiver to an individual because a waiver granted to an entity, in theory, lasts forever. We suggest that the proposed rule be modified as follows:

*Conditions.* A waiver is unique to the recipient and is nontransferable AND CONDITIONED UPON THE ON-GOING, ACTIVE EMPLOYMENT OF A SPECIFIED PRINCIPAL INDIVIDUAL (THE “PRINCIPAL”) WHO ALSO IS QUALIFIED AS A PARTICIPATING ABSTRACTOR. A waiver recipient AND THE PRINCIPAL shall be accountable to the division for abstracts prepared for division purposes. The division may require a waiver recipient AND PRINCIPAL to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division WILL ~~may~~ review the waiver ~~recipient~~ annually and may require a renewal, modification or addition to any required assurances. THE RECIPIENT SHALL NOTIFY THE DIVISION OF THE DEATH, DISABILITY, OR DISSOCIATION OF THE PRINCIPAL FROM THE RECIPIENT. UPON THE DEATH, DISABILITY, OR DISSOCIATION OF THE PRINCIPAL, A RECIPIENT SHALL DISCONTINUE ABSTRACTING.

#### Request for Regulatory Analysis

Pursuant to section 17A.4A, Code of Iowa (2015), Iowa Land Title Association, which represents at least 25 small businesses that may be affected by the rule-making, hereby requests that Iowa Title Guaranty conduct a regulatory analysis.<sup>16</sup> We believe, quite frankly, that the proposed rules would have a substantial impact on small abstracting businesses all over the State of Iowa.

#### Request for Hearing

We understand that Iowa Title Guaranty will conduct a hearing on September 22, 2015. In the event that the hearing is cancelled or otherwise not held, Iowa Land Title Association requests that the Division hold a hearing on the proposed rules. We will have members present at the presently scheduled hearing or any other substituted hearing.

Sincerely,



Mike McLain, President  
Iowa Land Title Association Board of Directors

**Exhibit A**

## Suggested form of Hardship Rule 9.7(1)(d)(5)(3):

For purposes of subrule 9.7(1)"d", THE TERM "hardship," AS REQUIRED BY SECTIONS 16.91(5) AND 17A.9A(2), CODE OF IOWA, MEANS CLEAR AND CONVINCING EVIDENCE OF EXCESSIVE OR UNWARRANTED deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances. THE TERM "HARDSHIP" MAY MEAN AND INCLUDE A FINANCIAL HARDSHIP ALONE. AN APPLICANT MUST DEMONSTRATE HARDSHIP UNDER THE "CLEAR AND CONVINCING" STANDARD BY SUBSTANTIAL EVIDENCE THAT INCLUDES FOR EACH COUNTY FOR WHICH A WAIVER IS SOUGHT A QUALITATIVE ANALYSIS OF AN APPLICANT'S FINANCIAL SITUATION AND THE ACTUAL COSTS OF THE TITLE PLANT REQUIREMENT. EVIDENCE OF UNAVOIDABLE BUSINESS START-UP COSTS AND NORMAL ON-GOING MAINTENANCE COSTS WITHOUT OTHER EVIDENCE IS NOT SUBSTANTIAL EVIDENCE OF HARDSHIP.

**Exhibit B**

## Suggested form of Public Interest Rule 9.7(1)(d)(5)(4):

For purposes of subrule 9.7(1)"d", THE TERM "public interest" means that which is beneficial to the public as a whole CONSISTENT WITH THE LEGISLATIVE FINDINGS AND MANDATES OF SECTION 16.91, including THE TERM "PUBLIC INTEREST" MAY MEAN AND INCLUDE, but is not limited to, (A) PROTECTING CONSUMERS, PARTICULARLY THOSE INDIVIDUALS HAVING LITTLE UNDERSTANDING OF TITLE MATTERS, increasing competition among abstractors, (B) ENSURING THE INTEGRITY OF THE LAND TITLE SYSTEM, (C) IMPROVING THE TITLE ASSURANCE SYSTEM AND DECREASING THE RISK EXPOSURE OF THE DIVISION AND PUBLIC FUNDS, (D) encouraging the use of certificates throughout the state, (E) making certificates more competitive than out-of-state title insurance, increasing the division's market share, improving the quality of land titles, and protecting consumers, AND (F) IMPROVING FREE MARKET CONDITIONS. IN ACCORDANCE WITH SECTIONS 16.91(5) AND 17A.9A(2), CODE OF IOWA, AN APPLICANT MUST DEMONSTRATE PUBLIC INTEREST UNDER THE "CLEAR AND CONVINCING" STANDARD BY SUBSTANTIAL EVIDENCE THAT INCLUDES FOR EACH COUNTY FOR WHICH A WAIVER IS SOUGHT QUALITATIVE AND QUANTITATIVE ANALYSES FOR EACH COUNTY IN WHICH A WAIVER IS SOUGHT OF EXISTING AND PROJECTED MARKET CONDITIONS, A STATEMENT OF WHETHER THE WAIVER WOULD AFFECT THE SUBSTANTIAL LEGAL RIGHTS OF ANY PERSON, AND A STATEMENT OF WHETHER AND HOW THE WAIVER WILL AFFORD SUBSTANTIALLY EQUAL PROTECTION OF PUBLIC WELFARE BY MEANS OTHER THAN REQUIRED BY SECTION 16.91(5), CODE OF IOWA, AND THESE RULES.

### Notes

<sup>1</sup> Iowa Code § 16.91(5)(a)(2) (“each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division”).

<sup>2</sup> Proposed Rule 9.7(1)(d).

<sup>3</sup> Iowa Code § 17A.19(10)(c); Iowa Land Title Ass’n v. Iowa Fin. Auth., 771 N.W.2d 399, 402 (Iowa 2009).

<sup>4</sup> Iowa Land Title Ass’n v. Iowa Fin. Auth., 771 N.W.2d 399, 402 (Iowa 2009).

<sup>5</sup> Iowa Code § 17A.19(10)(n).

<sup>6</sup> Proposed Rule 9.7(1)(d)(3)(8).

<sup>7</sup> Iowa Code § 16.91(5)(a)(2) (“each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division”).

<sup>8</sup> Iowa Code § 16.4C.

<sup>9</sup> See Des Moines County Abstract Company v Iowa Finance Authority, Des Moines County Equity case No. CVEQ 006 597 (slip op. ¶ 23 at p. 8-9) (the applicant “must have shown by clear and convincing evidence, that the requirement would cause [the applicant] to suffer an excessive or unwarranted deprivation.”).

<sup>10</sup> Iowa Code § 17A.9A(2)(a). Des Moines County Abstract Company v Iowa Finance Authority, Des Moines County Equity case No. CVEQ 006 597 (slip op. ¶ 23 & 24 at p. 8-9) (the applicant “must have shown by clear and convincing evidence, that the requirement would cause [the applicant] to suffer an excessive or unwarranted deprivation.”).

<sup>11</sup> Iowa Code § 17A.9A(2)(a). Des Moines County Abstract Company v Iowa Finance Authority, Des Moines County Equity case No. CVEQ 006 597 (slip op. ¶ 23 at p. 8-9) (the applicant “must have shown by clear and convincing evidence, that the requirement would cause [the applicant] to suffer an excessive or unwarranted deprivation.”).

<sup>12</sup> Des Moines County Abstract Company v Iowa Finance Authority, Des Moines County Equity case No. CVEQ 006 597 (slip op. ¶ 24 at p. 9).

<sup>13</sup> 265 Iowa Admin. Code § 9.7(2).

<sup>14</sup> Iowa Code § 17A.9A(2)(b).

<sup>15</sup> Iowa Code § 16.4C.

<sup>16</sup> Iowa Code § 17A.4A.

## ARC 2264C

### LABOR SERVICES DIVISION[875]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board (Board) hereby gives Notice of Intended Action to amend Chapter 71, “Administration of the Conveyance Safety Program,” Chapter 72, “Conveyances Installed On or After January 1, 1975,” and Chapter 73, “Conveyances Installed Prior to January 1, 1975,” Iowa Administrative Code.

The proposed amendments change the safety standards for alterations of residential elevators installed in public buildings and for alterations of escalators.

## LABOR SERVICES DIVISION[875](cont'd)

The current Iowa safety standards for alterations of escalators can make modernizations of escalators unnecessarily difficult and expensive. These amendments make the more flexible American Society of Mechanical Engineers (ASME) standards applicable in Iowa.

The Board proposes changes relating to residential elevators installed in public buildings in order to facilitate the child entrapment rules adopted in **ARC 1972C** (IAB 4/29/15).

The purposes of these amendments are to protect the health and safety of the public, ease an existing restriction on escalator alterations, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on December 15, 2015, a public hearing will be held on December 16, 2015, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than December 16, 2015, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

No variance procedures are included in this rule making. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, no adverse impact on jobs is expected.

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Amend subrule 71.10(3) as follows:

**71.10(3)** ~~With the exception of replacing brushes on or adding brushes to escalators, all alterations~~ Alterations of conveyances other than escalators and elevators shall require that the entire conveyance be brought into compliance with the current code.

ITEM 2. Adopt the following **new** subrule 72.13(6):

**72.13(6)** *Alterations of handicapped restricted use elevators.* A component of a handicapped restricted use elevator being altered shall comply with the portions of ASME A17.1, section 5.3, applicable to the component. The edition of ASME A17.1 adopted by reference in rule 875—72.1(89A) shall be applied.

ITEM 3. Adopt the following **new** subrule 73.8(7):

**73.8(7)** *Alterations of handicapped restricted use elevators.* A component of a handicapped restricted use elevator being altered shall comply with the portions of ASME A17.1, section 5.3, applicable to the component. The edition of ASME A17.1 adopted by reference in rule 875—72.1(89A) shall be applied.

**ARC 2251C**

## LABOR SERVICES DIVISION[875]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby gives Notice of Intended Action to amend Chapter 90, “Administration of the Boiler and Pressure Vessel Program,” and Chapter 91, “General Requirements for All Objects,” Iowa Administrative Code.

In this Notice, the Boiler and Pressure Vessel Board proposes to adopt by reference current versions of codes published by the American Society of Mechanical Engineers, National Fire Protection Association,

## LABOR SERVICES DIVISION[875](cont'd)

and National Board of Boiler and Pressure Vessel Inspectors. Adopting rules that are consistent with current industry standards allows installation of the most current technologies in Iowa.

The purposes of these amendments are to make the rules more current, protect the safety of the public, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on December 15, 2015, a public hearing will be held on December 16, 2015, at 2:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than December 16, 2015, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

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

These amendments are intended to implement Iowa Code chapter 89.

The following amendments are proposed.

ITEM 1. Amend subrule 90.6(1) as follows:

**90.6(1) General.** All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code ~~(2013)~~ (2015), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

ITEM 2. Amend subrule 91.1(1) as follows:

**91.1(1) ASME boiler and pressure vessel codes adopted by reference.** The ASME Boiler and Pressure Vessel Code ~~(2013)~~ (2015) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code ~~(2013)~~ (2015) except for objects that meet one of the following criteria:

- a. An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;
- b. An object within the scope of 875—Chapter 95;
- c. Rescinded IAB 10/5/11, effective 11/9/11.
- d. A miniature boiler installed before March 31, 1967;
- e. A power boiler or unfired steam pressure vessel installed before July 4, 1951; or
- f. A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

ITEM 3. Amend subrules 91.1(3) and 91.1(4) as follows:

**91.1(3) Inspection code adopted by reference.** The National Board Inspection Code ~~(2013)~~ (2015) is adopted by reference, and reinstallations, installations, alterations, and repairs after ~~May 20, 2015~~ April 1, 2016, shall comply with it.

**91.1(4) Electric code adopted by reference.** The National Electrical Code ~~(2011)~~ (2014) is adopted by reference, and reinstallations and installations after ~~May 20, 2015~~ April 1, 2016, shall comply with it.

ITEM 4. Amend subrule 91.1(7) as follows:

**91.1(7) Mechanical code adopted by reference.** Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) ~~(2012)~~ (2015) are adopted by reference, and installations and reinstallations after ~~May 20, 2015~~ April 1, 2016, shall comply with them.

ITEM 5. Amend subrules 91.1(9) to 91.1(11) as follows:

**91.1(9) Fuel gas code adopted by reference.** National Fire Protection Association National Fuel Gas Code, NFPA 54 ~~(2012)~~ (2015), is adopted by reference, and installations and reinstallations after ~~May 20, 2015~~ April 1, 2016, shall comply with it.

LABOR SERVICES DIVISION[875](cont'd)

**91.1(10)** *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (~~2011~~) (2014), is adopted by reference, and installations and reinstallations after ~~October 10, 2012~~ April 1, 2016, shall comply with it.

**91.1(11)** *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (~~2011~~) (2015), is adopted by reference, and installations and reinstallations after ~~October 10, 2012~~ April 1, 2016, shall comply with it.

**ARC 2249C****MEDICINE BOARD[653]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby proposes to amend Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

The purpose of Chapter 13 is to establish standards of medical practice for medical physicians and surgeons and osteopathic physicians and surgeons. The proposed rule implements 2015 Iowa Acts, Senate File 462, which allows physicians to write prescriptions for authorized facilities, including public schools, to stock an epinephrine auto-injector supply for administration by trained non-health care personnel to individuals at risk of anaphylaxis.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on October 16, 2015.

Any interested person may present written comments on the proposed rule not later than 4:30 p.m. on December 15, 2015. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

There will be a public hearing on December 15, 2015, at 11 a.m. at the Board’s office, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

This rule is intended to implement Iowa Code chapters 135, 147, 148, 272C and 280.

The following amendment is proposed.

Adopt the following **new** rule 653—13.12(135,147,148,272C,280):

**653—13.12(135,147,148,272C,280) Standards of practice—prescribing epinephrine auto-injectors in the name of an authorized facility.**

**13.12(1)** Definitions. For purposes of this rule:

“*Authorized facility*” means any nonpublic school which is accredited pursuant to Iowa Code section 256.11, any school directly supported in whole or in part by taxation, a food establishment as defined in Iowa Code section 137F.1, a carnival as defined in Iowa Code section 88A.1, a recreational camp, a youth sports facility, or a sports area.

“*Epinephrine auto-injector*” means a device for immediate self-administration or administration by another trained person of a measured dose of epinephrine to a person at risk of anaphylaxis.

“*Physician*” means a person licensed pursuant to Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery.

**13.12(2)** Notwithstanding any other provision of law to the contrary, a physician may prescribe epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to

MEDICINE BOARD[653](cont'd)

2015 Iowa Acts, Senate File 462, section 1 [Iowa Code section 135.185]; Iowa Code section 280.16 as amended by 2015 Iowa Acts, Senate File 462, section 2; and 2015 Iowa Acts, Senate File 462, section 3 [Iowa Code section 280.16A].

**13.12(3)** A physician who prescribes epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to 2015 Iowa Acts, Senate File 462, section 1 [Iowa Code section 135.185], Iowa Code section 280.16 as amended by 2015 Iowa Acts, Senate File 462, section 2, and 2015 Iowa Acts, Senate File 462, section 3 [Iowa Code section 280.16A], provided the physician has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

## ARC 2266C

### PUBLIC SAFETY DEPARTMENT[661]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 100.1, the State Fire Marshal in the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 200, “Fire Marshal Administration,” Chapter 201, “General Fire Safety Requirements,” Chapter 202, “Requirements for Specific Occupancies,” and Chapter 210, “Smoke Detectors,” Iowa Administrative Code.

The State Fire Marshal in the Department of Public Safety is authorized to adopt administrative rules, according to Iowa Code section 100.1(5). The proposed amendments implement the policy of adopting fire code provisions that are consistent with the building code provisions provided in the most recent editions in the code cycle. A similar policy has been used with regard to plumbing and mechanical codes. The most recent editions of the codes used in the construction industry reflect current industry standards and promote consistency in the regulations affecting the construction industry.

A public hearing on these proposed amendments will be held on January 5, 2016, at 10 a.m. in the First Floor Public Conference Room (Room 125), Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa. Additional public hearings will be held at 11:30 a.m. on January 7, 2016, at Iowa State Patrol Post #12, 22365 20th Avenue, Stockton, Iowa, and at 11:30 a.m. on January 8, 2016, at Iowa State Patrol Post #3, 2025 Hunt Avenue, Council Bluffs, Iowa. Persons may present their views orally or in writing at the public hearings.

In addition, any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa 50319; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) by 4:30 p.m. on January 8, 2016.

Adoption of amendments consistent with the 2015 International Fire Code (IFC) is proposed because the 2015 IFC is the most recent edition of industry standards and because the adoption promotes consistency of governing codes, eases the burden of planning, constructing, and maintaining buildings, and meets the business needs of the building industry while also meeting the expectations and needs of the public who use these buildings. The adoption of the 2015 IFC will assist businesses, individuals and the construction industry by streamlining construction requirements in the state. Informal meetings have been held with stakeholders in the construction industry, who have supported the adoption of the most recent edition of the IFC.

Rules regarding the fire code are subject to the waiver provisions of rule 661—10.222(17A). The Commissioner of Public Safety and the State Fire Marshal do not have authority to waive requirements established by statute, according to Iowa Code sections 100.1(5) and 103A.7.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

After analysis and review of this rule making, there should be a positive impact on jobs. The State Fire Marshal will continue to work with stakeholders to maximize this rule making's positive impact on jobs. Any fiscal impact is expected to be minimal and less than \$100,000 annually or \$500,000 during the next five years.

These amendments are intended to implement Iowa Code section 100.1(5).

The following amendments are proposed.

ITEM 1. Amend rule 661—200.3(100) as follows:

**661—200.3(100) Building plan approval and plan review fees.** Plans for the proposed construction of certain new buildings or additions, alterations or changes to existing buildings require the approval of the fire marshal and shall be submitted to the building code bureau.

**200.3(1)** Plans for initial construction or alterations, changes, additions, renovations or remodeling of the following shall be submitted to the building code bureau, unless the plans have been submitted to a local fire or building department for approval based upon compliance with the rules of the fire marshal or a local fire ordinance recognized in rule 661—~~201.4(100)~~ 201.5(100):

*a.* to *c.* No change.

*d.* Any correctional facility, or

*e.* Any gaming facility; ;

**200.3(2)** Plans for initial construction or alterations, changes, additions, renovations or remodeling of the following shall be submitted to the building code bureau for approval based upon compliance with rules of the fire marshal:

~~f.~~ *a.* Any facility housing an adult day service,

~~g.~~ *b.* Any assisted living facility,

~~h.~~ *c.* Any residential care facility, ~~or~~

~~i.~~ *d.* Any elder group home; or

*e.* Any facility owned by the state or an agency of the state.

**200.3(2) 200.3(3)** Plans for initial construction or alterations, changes, additions, renovations or remodeling of any building or facility subject to the provisions of 661—Chapter 205 shall be submitted to the building code bureau.

**200.3(3) 200.3(4)** Building plan submittals.

*a.* No change.

*b.* *Shop drawings.* Shop drawings, equipment specifications and supporting documentation for fire alarm and sprinkler systems shall be submitted for review and approval and signed by a responsible managing employee licensed in accordance with Iowa Code chapter 100C. If the system is being installed as part of a project which has been designed by an engineer or architect, the submittal shall be approved by the responsible architect or engineer prior to submittal to the fire marshal. Each submittal shall be examined, and the submitter shall be notified of the findings. Only one copy of shop drawings, equipment specifications and supporting documentation is required. Staff of the building code bureau shall send a letter of approval to the submitter in lieu of returning approved shop drawings.

*c.* No change.

**200.3(4) 200.3(5)** If the blueprints and specifications are not acceptable, the building code bureau shall notify the submitter of the deficiencies and request that the submitter either forward changes or request a review of the blueprints and specifications with the building code bureau.

**200.3(5) 200.3(6)** If, after such review, the submitter disputes the findings of the plan reviewer, the submitter may request that the disputed questions be reviewed by the building code commissioner and the chief of the fire prevention bureau.

**200.3(6) 200.3(7)** If the submitter disputes the findings of the building code commissioner and the chief of the fire prevention bureau, the submitter may appeal to the fire marshal under the provisions of rule 661—200.2(100).

**200.3(7) 200.3(8)** 661—subrule 300.4(2), paragraphs “*b*” and “*c*,” are adopted by reference.

NOTE: 661—subrule 300.4(2) establishes fees for plan reviews.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~200.3(8)~~ **200.3(9)** The responsible design professional for a project shall schedule a preliminary meeting with the building code bureau to discuss code compliance issues early in the design development phase. The responsible design professional shall contact the bureau to schedule the preliminary meeting. There is no separate fee for a preliminary meeting. If the responsible design professional plans to request approval to bid the project as part of the preliminary meeting, the responsible design professional shall request a copy of the document “Preliminary Meeting Checklist” at the time the meeting is scheduled and shall be prepared to address all applicable issues identified on the checklist at the preliminary meeting. Approval to bid the project shall not be given unless all applicable issues identified on the checklist have been addressed to the satisfaction of the state fire marshal or the state fire marshal’s designee.

~~200.3(9)~~ **200.3(10)** A construction project that is subject to a provision of this chapter or 661—Chapter 201 that requires compliance with a provision of the ~~2009~~ 2015 edition of any code published by the International Code Council may comply with either the current requirements of this chapter and 661—Chapter 201 or the provisions of this chapter and 661—Chapter 201 as they applied prior to ~~January 1, 2010~~ July 1, 2016, if construction has commenced on or prior to ~~March 31, 2010~~ September 30, 2016. “Commenced” means the submitter has received preliminary approval of the plans. If a construction project receives preliminary approval based upon the provisions of this chapter and 661—Chapter 201 as they applied prior to ~~January 1, 2010~~ July 1, 2016, then final approval must be received on or prior to ~~September 30, 2010~~ December 31, 2016.

ITEM 2. Amend paragraph **200.4(7)“a”** as follows:

*a.* The inspection fee for a hospital or health care facility licensed or seeking licensure pursuant to Iowa Code chapter 135B or 135C or a group home licensed or seeking licensure in this state is \$2.50 per bed.

ITEM 3. Amend rule 661—201.2(100) as follows:

**661—201.2(100) General provisions.** The following publications or indicated portions thereof are hereby adopted by reference as general fire safety requirements and shall apply to all occupancies other than those to which provisions specific to an occupancy explicitly exclude these provisions or any individual provision contained therein.

**201.2(1)** International Fire Code, ~~2009~~ 2015 edition, published by the International Code Council, ~~5203 Leesburg Pike, Suite 600, Falls Church, VA 22041~~ 1500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001, with the following amendments:

*a. to e.* No change.

*f.* Delete section ~~315.2.3~~ 315.3.3 and insert in lieu thereof the following new section:

~~315.2.3~~ **315.3.3 Equipment Rooms.** Combustible material shall not be stored in boiler rooms, mechanical rooms, or electrical equipment rooms or in fire command centers as specified in Section 508.1.5.

Exception: In sprinklered equipment rooms that have sufficient space to allow a minimum of 10 feet between all combustible storage and the heating, mechanical or electrical equipment in the room.

*g.* Delete section 405.2 and table 405.2 and insert in lieu thereof the following new section and new table:

**405.2 Frequency.** Required emergency evacuation drills shall be held at the intervals specified in Table 405.2 or more frequently where necessary to familiarize all occupants with the drill procedure.

**TABLE 405.2  
FIRE AND EVACUATION DRILL FREQUENCY AND PARTICIPATION**

GROUP OR OCCUPANCY	FREQUENCY	PARTICIPATION
Group A	Quarterly	Employees
Group B <sup>(c)</sup>	Annually	Employees
Group E	See (a) below	All occupants
Group I	Quarterly on each shift	Employees
Group I-1 <sup>(b)</sup> and Group R-4 (assisted living facilities)	Quarterly	All occupants
Group R-1	Quarterly on each shift	Employees
Group R-2 <sup>(d)</sup>	Four annually	All occupants
High-rise	Annually	Employees

## Footnotes:

(a) ~~The frequency shall be allowed to be modified in accordance with Section 408.3.2.~~ Fire and severe weather drills shall be conducted in accordance with Iowa Code chapter 100. In severe climates, the fire code official shall have the authority to modify the emergency evacuation drill frequency.

(b) Fire and evacuation drills in assisted living facilities shall include complete evacuation of the premises in accordance with ~~Section 408.10.5~~ 403.10.3.6. Drills shall be conducted not less than six times per year on a bimonthly basis, with not less than two drills conducted during the night when residents could reasonably be expected to be sleeping. The drills shall be permitted to be announced in advance to the residents. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.

(c) Group B buildings that have an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.

(d) Applicable to Group R-2 college and university buildings in accordance with Section 408.3.

*h.* ~~Delete section 609.1 and insert in lieu thereof the following new section:~~

**609.1 General.** Commercial kitchen exhaust hoods shall comply with the requirements of National Fire Protection Association (NFPA) 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition.

*i.* ~~Delete section 807.4.3.1 and insert in lieu thereof the following new section:~~

**807.4.3.1 Storage in corridors and lobbies.** ~~Clothing and personal effects shall not be stored in corridors and lobbies.~~

Exceptions:

1. ~~Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.~~

2. ~~Storage in metal lockers, provided the minimum required egress width is maintained.~~

*h.* ~~Delete section 807.5.2.1 and insert in lieu thereof the following new section:~~

**807.5.2.1 Storage in corridors and lobbies.** ~~Clothing and personal effects shall not be stored in corridors and lobbies.~~

Exceptions:

1. ~~Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.~~

2. ~~Storage in metal lockers, provided the minimum required egress width is maintained.~~

*i.* ~~Delete section 903.2.8 and insert in lieu thereof the following new section:~~

**903.2.8 Group R.** ~~An automatic sprinkler system installed in accordance with section 903.3 shall be provided throughout all buildings with a Group R fire area.~~

Exception: Cabin buildings that are located in remote areas without a sufficient municipal water supply for design of a fire sprinkler system and that meet all of the following:

1. Not more than one story.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

2. Not more than 750 square feet in floor area.
  3. Fuel-fired heating equipment and other fuel-fired appliances are separated from sleeping areas by a one-hour fire-rated assembly.
  4. Provided with fire alarm and smoke alarm systems as required by Section 907 for R-1 occupancies.
  5. Basements are not allowed.
  6. Maintain a fire separation of 20 feet from any other building or structure.
  7. Comply with all applicable requirements of this Code.
  - j.* ~~Delete section 906.1 and insert in lieu thereof the following new section:~~  
**906.1 Where Required.** Portable fire extinguishers shall be installed in the following locations:
    1. ~~In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.~~
    2. ~~Within 30 feet (9144 mm) of commercial cooking equipment.~~
    3. ~~In areas where flammable or combustible liquids are stored, used or dispensed.~~
    4. ~~On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.~~
    5. ~~Where required by the sections indicated in Table 906.1.~~
    6. ~~Special hazard areas, including but not limited to laboratories, computer rooms and generator rooms.~~
  - k.* ~~Add the following new paragraph to section 907.2.2:~~  
    4. ~~The Group B fire area that contains an educational occupancy for students above the twelfth grade with an occupant load of greater than 50 persons.~~
  - l. j.* ~~Delete section 907.2.3 and insert in lieu thereof the following new section:~~  
**907.2.3 Group E.** In the absence of a complete automatic sprinkler system, a complete automatic detection system utilizing an emergency voice/alarm communication system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas utilizing an emergency voice/alarm communication system in compliance with Section 907.5.2.2 and installed in accordance with Section 907.6. ~~When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.~~ As a minimum, smoke detection shall be provided in corridors at a maximum spacing of 30 feet on center, and heat or smoke detection shall be provided in any hazardous or nonoccupied areas.
- Exceptions:
1. Group E occupancies with an occupant load of less than 50.
  2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
    - 2.1. Interior corridors are protected by smoke detectors with alarm verification.
    - 2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.
    - 2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
    - 2.4. Off-premises monitoring is provided.
    - 2.5. The capability to activate the evacuation signal from a central point is provided.
    - 2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.
  3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow, and manual activation is provided from a normally occupied location.
  4. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

occupant loads of 100 or less, provided that activation of the fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

*m.* ~~Add the following new section 1003.8:~~

~~**1003.8 Location of Preschool through Second Grade Students.** In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.~~

*k.* Add the following new section 1003.8:

**1003.8 Frost protection.** Exterior landings at doors shall be provided with frost protection.

*l.* Add the following new section 1028.6:

**1028.6 Exit discharge pathways.** Exit discharge pathways shall be paved from all required exits of a building to a public way or parking lot.

*n. m.* Delete section ~~1028.1.1~~ 1029.1.1 and insert in lieu thereof the following new section:

~~**1028.1.1**~~ **1029.1.1** Bleachers, grandstands, and folding and telescopic seating that are not building elements shall comply with ICC-300, Standard for Bleachers, Folding and Telescopic Seating, and Grandstands, 2007 2012 edition, with the following amendments to ICC-300:

(1) and (2) No change.

*n.* Delete section 1103.7.1 and insert in lieu thereof the following new section:

**1103.7.1** Existing Group E occupancies shall be provided with a fire alarm system utilizing an emergency voice/alarm communication system in compliance with Section 907.5.2.2 and installed in accordance with Section 907.6. As a minimum, smoke detection shall be provided in corridors at a maximum spacing of 30 feet on center, and heat or smoke detection shall be provided in any hazardous or nonoccupied areas.

Exceptions:

1. A building with a maximum area of 1,000 square feet that contains a single classroom and is located no closer than 50 feet from another building.

2. Group E occupancy with an occupant load of less than 50.

3. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

*o.* Delete section 1103.8 and insert in lieu thereof the following new section:

**1103.8 Single- and multiple-station smoke alarms.** Single- and multiple-station smoke alarms shall be installed in existing Group I-1 and R occupancies in accordance with Sections 1103.8.1 through 1103.8.4.

*p.* Delete section 1103.8.3 and insert in lieu thereof the following new section:

**1103.8.3 Power source.** Single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms with integral strobes that are not equipped with battery backup shall be connected to an emergency electrical system. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exceptions:

1. Single-station smoke alarms are permitted to be solely battery-operated and installed in existing buildings where construction is not taking place provided that the alarms are powered with a nonreplaceable, nonremovable battery that can power the alarm for a minimum of ten years.

2. Replacement of single-station smoke alarms is permitted in existing buildings where construction is not taking place provided that the alarms are powered with a nonreplaceable, nonremovable battery that can power the alarm for a minimum of ten years.

3. Smoke alarms are permitted to be solely battery-operated in buildings that are not served from a commercial power source provided that the alarms are powered with a nonreplaceable, nonremovable battery that can power the alarm for a minimum of ten years.

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4. Smoke alarms are permitted to be solely battery-operated in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior walls or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available that could provide access for building wiring without the removal of interior finishes.

5. Single-station systems that are interconnected and utilize third-party monitoring.

q. Add the following new section 1103.8.4:

**1103.8.4 Smoke alarm service life.** Single-station battery-operated smoke alarms shall be replaced when the alarm has been in use for ten years or more.

~~o. r.~~ Amend any reference to any section within chapter ~~22 23~~ to read as a reference to “Chapter ~~22 23~~.”

~~p. s.~~ Delete chapter ~~22 23~~ and insert in lieu thereof the following new chapter:

CHAPTER ~~22 23~~

MOTOR FUEL-DISPENSING FACILITIES AND REPAIR GARAGES

**SECTION ~~2201 2301~~**

**GENERAL**

**~~2201.1 2301.1~~** Motor fuel-dispensing facilities and repair garages shall comply with the applicable provisions of 661—Chapter 221.

~~q. t.~~ Amend any reference to any section within chapter ~~34 57~~ to read as a reference to “Chapter ~~34 57~~.”

~~r. u.~~ Delete chapter ~~34 57~~ and insert in lieu thereof the following new chapter:

CHAPTER ~~34 57~~

FLAMMABLE AND COMBUSTIBLE LIQUIDS

**SECTION ~~3401 5701~~**

**GENERAL**

**~~3401.1 5701.1~~** Transportation, storage, handling, and use of flammable and combustible liquids shall comply with the applicable provisions of 661—Chapter 221.

~~s. v.~~ Amend any reference to any section within chapter ~~38 61~~ to read as a reference to “Chapter ~~38 61~~.”

~~t. w.~~ Delete chapter ~~38 61~~ and insert in lieu thereof the following new chapter:

CHAPTER ~~38 61~~

LIQUEFIED PETROLEUM GASES

**SECTION ~~3801 6101~~**

**GENERAL**

**~~3801.1 6101.1~~** Transportation, storage, handling, and use of liquefied petroleum gases shall comply with the applicable provisions of 661—Chapter 226.

~~u.~~ Delete section ~~4603.6.1~~ and insert in lieu thereof the following new section:

**~~4603.6.1~~** Existing Group E occupancies shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. Where smoke or heat detectors are installed, such detectors shall be connected to the building fire alarm system.

Exceptions:

1. A building with a maximum area of 1,000 square feet that contains a single classroom and is located no closer than 50 feet from another building.

2. Group E occupancy with an occupant load of less than 50.

~~v. x.~~ Any reference to NFPA 10 is amended to read as follows:

NFPA 10 with the following amendment:

Delete sections 7.1.2.1, 7.1.2.2, and 7.1.2.3 and insert in lieu thereof the following new sections:

7.1.2.1 A trained person who has undergone the instructions necessary to reliably perform maintenance and has the manufacturer’s service manual shall service the fire extinguishers not more than one year apart, as outlined in Section 7.3.

7.1.2.2\* Maintenance, servicing, and recharging shall be performed by trained persons who have available the appropriate servicing manual(s), the proper types of tools, recharge materials, lubricants,

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and manufacturer's recommended replacement parts or parts specifically listed for use in the fire extinguisher.

NOTE: Requirements in NFPA 10 for certification of personnel who maintain portable fire extinguishers are removed. These personnel must still be trained and have available service manuals.

~~y.~~ Adopt Appendices B, C, and D.

z. Amend references in chapter 80 as follows:

(1) Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

(2) Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661—301.9(103A)."

(3) Delete all references to the "International Mechanical Code" and insert in lieu thereof "state mechanical code."

(4) Delete all references to the "International Building Code" and insert in lieu thereof "rule 661—301.3(103A)."

(5) Delete all references to the "International Residential Code" and insert in lieu thereof "rule 661—301.8(103A)."

**201.2(2)** The following chapters and sections of the International Building Code, ~~2009~~ 2015 edition, published by the International Code Council, ~~5203 Leesburg Pike, Suite 600, Falls Church, VA 22041~~ 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001, as amended by rule 661—301.3(103A).

*a. to g.* No change.

ITEM 4. Amend rule 661—201.3(100) as follows:

**661—201.3(100) Electrical installations.** ~~Electrical installations shall comply with the~~ The provisions of ~~NFPA 70, the National Electrical Code, 2011~~ 2014 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, are hereby adopted by reference as the requirements for electrical installations, with the following amendments:

**201.3(1)** and **201.3(2)** No change.

**201.3(3)** Delete section 210.12(B).

**201.3(4)** Delete the exception to section 220.12 and insert in lieu thereof the following exception:

Exception: Where the building is designed and constructed to comply with an energy code adopted by the local authority, the lighting load shall be permitted to be calculated at the values specified in the energy code.

This rule is intended to implement Iowa Code chapter 100.

ITEM 5. Amend rule 661—201.4(100) as follows:

**661—201.4(100) Existing buildings or structures.** Additions or alterations to any building or structure shall comply with the requirements of this chapter for new construction. Additions or alterations shall not be made to an existing building or structure that will cause the existing building or structure to be in violation of any provisions of 661—Chapter 201. An existing building plus additions shall comply with the height and area provisions of Chapter 5 of the International Building Code, ~~2009~~ 2015 edition. Portions of the structure not altered and not affected by the alteration are not required to comply with the requirements established in 661—Chapter 201 for a new structure.

ITEM 6. Amend rule 661—201.5(100) as follows:

**661—201.5(100) Recognition of local fire ordinances and enforcement.** With the exception of a health care facility subject to the requirements of 661—Chapter 205, a building, structure, or facility shall be deemed to be in compliance with the requirements established in rules of the fire marshal if all of the following conditions are met:

1. The building, structure, or facility is in a local jurisdiction which has adopted a local fire ordinance which adopts by reference any edition of the International Fire Code, published by the

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International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041 1500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001; any edition of NFPA 1, Uniform Fire Code, published by the National Fire Protection Association; or the Uniform Fire Code, 1997 edition, published by the Western Fire Chiefs Association.

2. to 4. No change.

Notwithstanding any conflicting provisions contained in any code adopted by reference in this chapter or by any local fire ordinance, compliance with the provisions of 661—Chapter 221 is required at any location or facility in which flammable or combustible liquids are stored, handled, or used, other than incidental use.

ITEM 7. Amend rule 661—202.1(100) as follows:

**661—202.1(100) Scope.** The provisions of this chapter apply solely to buildings, structures, and facilities currently being used and those being proposed to be used in the specific ways described in this chapter. All other buildings, structures, and facilities in which people congregate are subject to the provisions of 661—Chapter 201 or 661—Chapter 205.

This rule is intended to implement Iowa Code chapter 100.

ITEM 8. Rescind and reserve rule **661—202.2(237)**.

ITEM 9. Rescind and reserve rule **661—202.3(137C)**.

ITEM 10. Amend rule 661—202.5(100,135C) as follows:

**661—202.5(100,135C) General requirements for small group homes (specialized licensed facilities) licensed pursuant to Iowa Code section 135C.2 and for facilities in which foster care is provided by agencies to fewer than six children pursuant to Iowa Code chapter 237.**

**202.5(1) Scope.** This rule applies to specialized facilities licensed under the provisions of Iowa Code section 135C.2 which have three to five beds and serve persons with ~~mental retardation~~ intellectual disabilities, chronic mental illness, developmental disabilities, or brain injuries. This rule shall also apply to facilities in which foster care is provided by agencies to fewer than six children pursuant to Iowa Code chapter 237.

**202.5(2) to 202.5(14)** No change.

This rule is intended to implement Iowa Code section 135C.2, subsection 5, paragraph “b:” and Iowa Code section 237.3, subsection 3.

ITEM 11. Rescind the definition of “Dual sensor smoke detector” in rule **661—210.1(100)**.

ITEM 12. Amend rule 661—210.3(100) as follows:

**661—210.3(100) General requirements.**

**210.3(1)** Approved single-station smoke detectors alarms shall be acceptable in all areas covered by this chapter, unless other fire warning equipment or materials are required by any provision of 661—Chapter 201, 202, or 205 or if a commercial grade smoke detection system has been installed. ~~Any single station smoke detector installed on or after April 1, 2010, in compliance with this subrule, including a replacement of an existing detector, shall be a dual sensor smoke detector. If sufficient dual sensor smoke detectors have been installed to comply with the requirements of this chapter, additional smoke detectors which may be other than dual sensor detectors may be installed.~~

**210.3(2)** Any installation of wiring and equipment shall comply with NFPA 70, National Electrical Code, ~~2008~~ 2014 edition, and requirements established by the manufacturer of the equipment serviced by the wiring.

**210.3(3)** Any single-station battery-operated alarms installed or replaced after July 1, 2016, shall be powered with a nonreplaceable, nonremovable battery that can power the alarm for a minimum of ten years. All devices, combinations of devices, and equipment to be installed in conformity with this chapter shall be approved and used for the purposes for which they are intended. ~~Any smoke detector installed on or after April 1, 2010, in compliance with this chapter, including a replacement of an existing~~

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~~detector, shall be a dual sensor smoke detector. If sufficient dual sensor smoke detectors have been installed to comply with the requirements of this chapter, additional smoke detectors which may be other than dual sensor detectors may be installed.~~

**210.3(4) and 210.3(5)** No change.

**210.3(6)** Single-station battery-operated or battery backup smoke alarms shall be replaced when the alarm has been in use for ten years or more.

~~**210.3(6)**~~ **210.3(7)** Power source.

*a.* and *b.* No change.

*c.* New and replacement smoke detectors installed after July 1, 2016, which receive their primary power from the building wiring where more than one smoke alarm is required to be installed shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms.

~~**210.3(7)**~~ **210.3(8)** The failure of any nonreliable or short-life component which renders the detector inoperative shall be readily apparent to the occupant of the sleeping unit without the need for a test. Each smoke detector shall detect abnormal quantities of smoke that may occur and shall properly operate in the normal environmental condition.

~~**210.3(8)**~~ **210.3(9)** Equipment shall be installed in accordance with the manufacturer's recommendations.

**210.3(9)** **210.3(10)** Installed fire warning equipment shall be mounted so as to be supported independently of its attachment to wires.

**210.3(10)** **210.3(11)** All apparatus shall be restored to normal immediately after each alarm or test.

~~**210.3(11)**~~ **210.3(12)** Smoke detectors shall be located as follows:

*a.* to *c.* No change.

**ARC 2250C****PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 103A.7, 103A.11 and 103A.14, the Building Code Commissioner in the Department of Public Safety and the Building Code Advisory Council hereby give Notice of Intended Action to amend Chapter 300, “State Building Code—Administration,” Chapter 301, “State Building Code—General Provisions,” Chapter 302, “State Building Code—Accessibility of Buildings and Facilities Available to the Public,” and Chapter 315, “Weather Safe Rooms,” Iowa Administrative Code.

The Building Code Commissioner in the Department of Public Safety is authorized to adopt administrative rules, and the Building Code Advisory Council is authorized to approve or disapprove the administrative rules, according to Iowa Code sections 103A.7, 103A.11, and 103A.14. The proposed amendments implement the policy of adopting the building code provisions provided in the most recent editions in the International Code Council (ICC) code cycle. A similar policy has been used with regard to plumbing and mechanical codes, pursuant to Iowa Code section 105.4. The most recent editions of the codes used in the construction industry reflect current industry standards, and adoption of the current codes helps to promote consistency in the regulations affecting the construction industry.

A public hearing on these proposed amendments will be held on January 5, 2016, at 10 a.m. in the First Floor Public Conference Room (Room 125), Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa. Additional public hearings will be held at 11:30 a.m. on January 7, 2016, at Iowa State Patrol Post #12, 22365 20th Avenue, Stockton, Iowa, and at 11:30 a.m. on January 8, 2016, at Iowa

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State Patrol Post #3, 2025 Hunt Avenue, Council Bluffs, Iowa. Persons may present their views orally or in writing at the public hearings.

In addition, any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa 50319; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) by 4:30 p.m. on January 8, 2016.

Adoption of the 2015 International Building Code (IBC) is proposed because the 2015 IBC constitutes the most recent edition of industry standards and because its adoption promotes consistency of governing codes, eases the burden of planning and constructing buildings, and meets the business needs of the building industry while also meeting the expectations and needs of the public who use these buildings. The adoption of the 2015 International Building Code will assist businesses, individuals and the construction industry by streamlining construction requirements in the state. Informal meetings have been held with stakeholders in the construction industry, who have supported the adoption of the most recent edition of the International Building Code. In accordance with Iowa Code section 103A.8C, the proposed amendments to Chapter 315 will adopt the standards of the 2015 ICC; however, there is no requirement that a safe room or storm shelter be included in new or existing construction unless one is required by another statute or federal statute or regulation.

Rules regarding the building code are subject to the waiver provisions of rule 661—10.222(17A). The Commissioner and the Building Code Advisory Council do not have authority to waive requirements established by statute, according to Iowa Code section 103A.7.

After analysis and review of this rule making, there should be a positive impact on jobs. The Council will continue to work with stakeholders to maximize this rule making's positive impact on jobs. Any fiscal impact is expected to be minimal and less than \$100,000 annually or \$500,000 during the next five years.

These amendments are intended to implement Iowa Code sections 103A.7, 103A.8, and 103A.8A.

The following amendments are proposed.

ITEM 1. Amend rule 661—300.1(103A) as follows:

**661—300.1(103A) State building code promulgated.** Iowa Code section 103A.7 assigns to the building code commissioner authority to promulgate the state building code, with the approval of the building code advisory council, except that adoption of the state historic building code requires the approval of the state historical society board of trustees, rather than the building code advisory council.

The state building code, as authorized by Iowa Code section 103A.7, includes 661—Chapters 16, 300, 301, 302, ~~and 303~~, 310, 315 and 322. The state historic building code is set forth in 661—Chapter 350.

ITEM 2. Amend rule 661—300.4(103A) as follows:

**661—300.4(103A) Plan reviews.**

**300.4(1)** *Plans and specifications review—approvals.*

*a. to c.* No change.

*d.* In sections 107.1 and 107.2.5 of the International Building Code, ~~2009~~ 2015 edition, the word “permit” shall be replaced by the words “plan review.”

*e.* No change.

*f.* Plans and specifications for projects ~~with a construction cost of \$1 million or more or projects subject to inspection~~ plan review by the commissioner shall be submitted in ~~an electronic format~~ a format specified on the plan review submittal form.

~~EXCEPTION: For projects with a construction cost of less than \$1 million that are subject to inspection by the commissioner, two identical sets of plans and specifications may be submitted in lieu of electronic submittal.~~

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~~NOTE: The electronic submission of plans and specifications for projects that are not subject to inspection by the commissioner and with a construction cost of less than \$1 million is strongly encouraged but not required.~~

~~g.~~ Any person planning to submit documents electronically shall contact the bureau for written instructions.

~~h.~~ g. Architectural technical submissions, engineering documents, and plans and specifications for construction, renovation, or remodeling of all state-owned buildings or facilities, including additions to existing buildings, shall be submitted to the commissioner for review and comment. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

~~i.~~ h. Architectural technical submissions, engineering documents, and plans and specifications for the initial construction of any building or facility that will not, when completed, be wholly owned by the state or an agency of the state shall be submitted to the commissioner for review and comment, if the construction is financed in whole or in part with funds appropriated by the state and there is no local building code in effect in the local jurisdiction in which the construction is planned or, if there is such a local building code in effect, it is not enforced through a system which includes both plan reviews and inspections. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

~~j.~~ i. Architectural technical submissions, engineering documents, and plans and specifications for construction, renovation, or remodeling of all buildings or facilities, including additions to existing buildings, to which the state building code applies, other than those subject to paragraph "~~h~~ g" or "~~i~~ h," shall be submitted to the commissioner for review and comment, unless applicability of the state building code is based upon a local ordinance enacted pursuant to Iowa Code section 103A.12. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

~~k.~~ j. If the state building code applies to a construction project based upon a local ordinance adopting the state building code, the submission shall be made to the local jurisdiction, provided that the local jurisdiction has established a building department, unless the local jurisdiction requires submission to the commissioner. Review and approval of such documents by the commissioner shall be at the discretion of the commissioner based upon available resources.

~~l.~~ k. No project for which a life cycle cost analysis is required to be completed pursuant to Iowa Code section 470.2 shall be approved for construction prior to receipt by the commissioner of the life cycle cost analysis, final approval of the life cycle cost analysis by the commissioner and the ~~office of energy independence~~ economic development authority pursuant to Iowa Code section 470.7, and the completion of all applicable requirements established in Iowa Code section 470.7.

~~m.~~ l. No project for which an energy review is required pursuant to subrule 303.1(3) shall be approved for construction prior to the receipt by the commissioner of the energy review.

NOTE: Compliance with the requirements of paragraphs "~~i~~ h" and "~~m~~ l" at the earliest practical time is strongly recommended. In no case shall the submission occur later than specified in the applicable statutory provisions and provisions of the state building code.

~~n.~~ m. Any submission to the commissioner of architectural technical submissions, engineering documents, or plans and specifications for construction, except for plans to renovate or remodel

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residential buildings of one or two units, shall include a statement that the construction will comply with all applicable energy conservation requirements.

**300.4(2) Copies and fees.** See 661—Chapters 16, ~~302~~, and ~~303~~ 322 for fees pertaining to factory-built structures.

~~a. Copies of the state building code or any portion thereof are available through the Web site of the department of public safety.~~

~~a. NOTE:~~ Codes and standards adopted by reference in the state building code which are published by other organizations, including, but not limited to, the American National Standards Institute, the International Code Council, the International Association of Plumbing and Mechanical Officials, and the National Fire Protection Association, may be purchased from the publishing organization. A copy of each code or standard adopted by reference in the state building code has been deposited in the Iowa state law library.

b. The fees for plan reviews completed by the building code bureau shall be calculated as follows:

Estimated Construction Costs	Calculation of Plan Review Fee
Up to and including \$1 million	\$.58 per thousand dollars or fraction thereof (minimum fee \$200)
More than \$1 million	\$580 for the first \$1 million plus \$.32 for each additional thousand dollars or fraction thereof
The plan review fees for fire suppression systems and fire alarm systems are separate fees and shall be calculated as follows:	
Fire Protection System Costs	Plan Review Fee
Fire suppression systems whose construction cost for materials and installation is calculated to be up to and including \$5,000	\$100
Fire suppression systems whose construction cost for materials and installation is calculated to be more than \$5,000 and up to and including \$20,000	\$200
Fire suppression systems whose construction cost for materials and installation is estimated to be more than \$20,000	\$400
Fire alarm systems whose construction cost for materials and installation is calculated to be up to and including \$5,000	\$100
Fire alarm systems whose construction cost for materials and installation is calculated to be more than \$5,000 and up to and including \$20,000	\$200
Fire alarm systems whose construction cost for materials and installation is estimated to be more than \$20,000	\$400

NOTE: Plan review fees for assisted living projects are contained in Iowa Code section 231C.18(2) "c." Elder group home plan review fees are contained in Iowa Code section 231B.17. Adult day services plan review fees are contained in Iowa Code section 231D.4.

Payment of the assigned fee shall accompany each plan when submitted for review. Payment shall be made by money order, check or draft made payable to the Treasurer, State of Iowa.

c. No change.

**300.4(3) to 300.4(5)** No change.

ITEM 3. Amend rule 661—301.2(103A), introductory paragraph, as follows:

**661—301.2(103A) Definitions.** The following definitions apply to 661—Chapters 300, 301, 302, ~~and~~ 303, 310, 315, 322 and 350.

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ITEM 4. Amend rule **661—301.2(103A)**, definition of “State plumbing code,” as follows:  
 “*State plumbing code*” means the state plumbing code adopted by the state plumbing and mechanical systems board, pursuant to Iowa Code chapter 105.

NOTE: As of January 1, 2007, the state plumbing code is found in 641—Chapter 25.

ITEM 5. Adopt the following new definition in rule **661—301.2(103A)**:  
 “*State mechanical code*” means the state mechanical code adopted by the state plumbing and mechanical systems board, pursuant to Iowa Code chapter 105.

ITEM 6. Amend rule 661—301.3(103A) as follows:

**661—301.3(103A) General provisions.** The provisions of the International Building Code, ~~2009~~ 2015 edition, published by the International Code Council, ~~5203 Leesburg Pike, Suite 600, Falls Church, VA 22041~~ 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001, are hereby adopted by reference as the general requirements for building construction, with the following amendments:

**301.3(1)** and **301.3(2)** No change.

**301.3(3)** Delete section ~~101.4~~ and sections therein 101.4.1 through 101.4.6.

**301.3(4)** to **301.3(9)** No change.

**301.3(10)** Delete section ~~906.1~~ and insert in lieu thereof the following new section:

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. ~~In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.~~

2. ~~Within 30 feet (9144 mm) of commercial cooking equipment.~~

3. ~~In areas where flammable or combustible liquids are stored, used or dispensed.~~

4. ~~On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1 of the International Fire Code.~~

5. ~~Where required by the sections indicated in Table 906.1.~~

6. ~~Special hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official.~~

**301.3(10)** Add the following to section 202, Definitions:

“Cabin Buildings.” A residential building or structure that is transient in nature and used for sleeping purposes when not classified as an Institutional Group I or when not regulated by the International Residential Code.

**301.3(11)** Delete section ~~907.2.2~~ and insert in lieu thereof the following new section:

907.2.2 Group B. A manual fire alarm system shall be installed in Group B occupancies where one of the following conditions exists:

1. ~~The combined Group B occupant load of all floors is 500 or more.~~

2. ~~The Group B occupant load is more than 100 persons above or below the lowest level of exit discharge.~~

3. ~~The Group B fire area contains a Group B ambulatory health care facility.~~

4. ~~The Group B fire area contains an educational occupancy for students above the twelfth grade with an occupant load of 50 or more persons.~~

~~Exception: Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow.~~

**301.3(11)** Add the following to section 310.2:

Cabin buildings.

**301.3(12)** Add the following new section 408.9.1:

408.9.1 Windowed Buildings. Plans and specifications for windowed buildings or portions of windowed buildings shall include a rational analysis demonstrating a tenable environment for exiting from the smoke compartment in the area of fire origin.

**301.3(13)** Delete section ~~423~~ in its entirety and insert in lieu thereof the following new section:

423 Storm Shelters.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

423.1 General. Any storm shelter or weather safe room as defined by rule 661—315.2(103A) shall be designed and constructed in accordance with ICC 500-2014.

423.1.1 Scope. In accordance with 661—Chapter 315, this section applies to storm shelters and weather safe rooms constructed on or after January 1, 2011. This section does not require the construction of a weather safe room or rooms for any construction project but does establish standards for design and construction of storm shelters and weather safe rooms when their construction is required by another statute, federal statute or regulation, or is incorporated voluntarily in a construction project.

**301.3(14)** Delete section 903.2.8 and insert in lieu thereof the following new section:

903.2.8 Group R. An automatic sprinkler system installed in accordance with section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception: Cabin buildings that are located in remote areas without a sufficient municipal water supply for design of a fire sprinkler system and that meet all of the following:

1. Not more than one story.
2. Not more than 750 square feet in floor area.
3. Fuel-fired heating equipment and other fuel-fired appliances are separated from sleeping areas by a one-hour fire-rated assembly.
4. Provided with fire alarm and smoke alarm systems as required by section 907 for R-1 occupancies.
5. Basements are not allowed.
6. Maintain a fire separation of 20 feet from any other building or structure.
7. Comply with all applicable requirements of the state building code.

**301.3(12) 301.3(15)** Delete section 907.2.3 and insert in lieu thereof the following new section:

907.2.3 Group E. In the absence of a complete automatic sprinkler system, a complete automatic detection system utilizing an emergency voice/alarm communication system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with utilizing an emergency voice/alarm communication system in compliance with section 907.5.2.2 and installed in accordance with section 907.6. As a minimum, of corridor smoke detection, shall be provided in corridors at a maximum spacing of 30 feet on center, and heat or smoke detection shall be provided in any hazardous or nonoccupied areas. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.
2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 2.1. Interior corridors are protected by smoke detectors with alarm verification.
  - 2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.
  - 2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
  - 2.4. Off-premises monitoring is provided.
  - 2.5. The capability to activate the evacuation signal from a central point is provided.
  - 2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.
3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow, and manual activation is provided from a normally occupied location.
4. Emergency voice/alarm communication systems meeting the requirements of section 907.5.2.2 and installed in accordance with section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the fire alarm system initiates an approved occupant notification signal in accordance with section 907.5.

**301.3(13)** Add the following new section 1003.8:

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~1003.8 Location of Preschool through Second Grade Students. In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.~~

**301.3(16)** Add the following new section 1003.8:

1003.8 Frost Protection. Exterior landings at doors shall be provided with frost protection.

**301.3(17)** Add the following new section 1027.5.1:

1027.5.1 Exit Discharge Pathways. Exit discharge pathways shall be paved from all exits of the building to the public way.

~~**301.3(14)**~~ **301.3(18)** Delete section ~~1028.1.1~~ 1029.1.1 and insert in lieu thereof the following new section:

~~1028.1.1~~ 1029.1.1 Bleachers, grandstands, and folding and telescopic seating that are not building elements shall comply with ICC-300, Standard for Bleachers, Folding and Telescopic Seating, and Grandstands, 2007 2012 edition, with the following amendments to ICC-300:

*a.* and *b.* No change.

~~**301.3(15)**~~ **301.3(19)** Add the following new section 1100:

1100. Any building or facility which is in compliance with the applicable requirements of 661—Chapter 302 shall be deemed to be in compliance with any applicable requirements contained in the International Building Code concerning accessibility for persons with disabilities.

~~**301.3(16)**~~ **301.3(20)** Delete chapter 29.

~~**301.3(17)**~~ **301.3(21)** Amend section 3001.2 by adding the following new unnumbered paragraph after the introductory paragraph:

Notwithstanding the references in Chapter 35 to editions of national standards adopted in this section, any editions of these standards adopted by the elevator safety board in 875—Chapter 72 are hereby adopted by reference. If a standard is adopted by reference in this section and there is no adoption by reference of the same standard in 875—Chapter 72, the adoption by reference in this section is of the edition identified in Chapter 35.

~~**301.3(18)**~~ Amend section ~~3401.3~~ by deleting “International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

~~**301.3(19)**~~ Delete appendices A through K.

**301.3(22)** Delete appendices A, B, D, E, F, G, H, I, J, K, L and M.

**301.3(23)** Retain Appendix C, Group U Agricultural Buildings.

~~**301.3(20)**~~ **301.3(24)** Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

~~**301.3(21)**~~ Delete all references to the “ICC Electrical Code” and insert in lieu thereof “rule 661—301.5(103A).”

~~**301.3(22)**~~ **301.3(25)** Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

~~**301.3(26)**~~ Delete all references to the “International Mechanical Code” and insert in lieu thereof “state mechanical code.”

~~**301.3(27)**~~ Delete all references to the “International Residential Code” and insert in lieu thereof “rule 661—301.8(103A).”

~~**301.3(28)**~~ Delete all references to the “International Energy Conservation Code” and insert in lieu thereof “661—Chapter 303.”

~~**301.3(23)**~~ **301.3(29)** *Hospitals and health care facilities.*

*a.* to *e.* No change.

ITEM 7. Amend rule 661—301.4(103A) as follows:

**661—301.4(103A) Mechanical requirements.** Provisions of the state mechanical code, 641—Chapter 61, adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105 shall apply to mechanical installations in this state. ~~The provisions of the International Mechanical Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls~~

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Church, VA 22041, are hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings, with the following amendments:

Delete section 101.1.

Delete sections 103, 104, 105, 106, 107, 108, 109, and 110 and sections therein.

Delete section 403 and insert in lieu thereof the following new section:

## SECTION 403

## MECHANICAL VENTILATION

Mechanical ventilation systems shall be designed in accordance with the provisions of ASHRAE Standard 62.1-2007, "Ventilation for Acceptable Indoor Air Quality," published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329.

Delete appendices A and B.

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A)."

Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661—301.9(103A)."

ITEM 8. Amend rule 661—301.5(103A) as follows:

**661—301.5(103A) Electrical requirements.** The provisions of the National Electrical Code, 2011-2014 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, are hereby adopted by reference as the requirements for electrical installations, with the following amendments:

**301.5(1) and 301.5(2)** No change.

**301.5(3)** Delete section 210.12(B).

**301.5(4)** Delete the exception to section 220.12 and insert in lieu thereof the following exception:

Exception: Where the building is designed and constructed to comply with an energy code adopted by the local authority, the lighting load shall be permitted to be calculated at the values specified in the energy code.

**301.5(5)** Delete section 406.4(D)(4).

This rule is intended to implement Iowa Code chapter 103A.

ITEM 9. Amend rule 661—301.6(103A) as follows:

**661—301.6(103A) Plumbing requirements.** Provisions of the state plumbing code, 641—Chapter 25, adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105, apply to plumbing installations in this state.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2009-2015 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001. The manufacturer's data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15) "e."

Private sewage disposal systems shall comply with 567—Chapter 69.

**301.6(1) and 301.6(2)** No change.

ITEM 10. Amend rule 661—301.7(103A) as follows:

**661—301.7(103A) Existing buildings.**

**301.7(1) Definition.** "Existing building" means a building erected prior to January 1, 2010 2015.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**301.7(2) Adoption.** The provisions of the International Existing Building Code, 2009 2015 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001, are hereby adopted by reference as the requirements for repair, alteration, change of occupancy, addition, and relocation of existing buildings, with the following amendments:

Delete section 101.1.

Delete section 101.4.2 and insert in lieu thereof the following new section:

101.4.2 Buildings Previously Occupied. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

~~Delete section 101.5.4.~~

~~Delete section 101.5.4.1.~~

~~Delete section 101.5.4.2.~~

~~Delete section 101.5.~~

~~Delete section 101.6.~~

~~Delete section 101.7.~~

Delete sections 103, 104, and 105 and sections therein.

Delete sections 106.1, ~~106.3.1, 106.3.3,~~ 106.3, 106.4, 106.5, and 106.6.

Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117 and sections therein.

~~Delete section 605.~~

~~Delete section 705.~~

~~Delete section 706.~~

~~Delete section 806.~~

~~Delete section 906.~~

~~Delete section 912.8.~~

~~Delete section 1012.8.~~

~~Delete section 1105.1.~~

~~Delete section 1205.15.~~

~~Delete chapters A1 through A5.~~

~~Delete appendix B and insert in lieu thereof the following new section:~~

~~Any building or facility subject to this rule shall comply with the provisions of 661—Chapter 302.~~

~~Delete resource A.~~

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A).”

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

Delete all references to the “International Mechanical Code” and insert in lieu thereof “state mechanical code.”

Delete all references to the “International Building Code” and insert in lieu thereof “rule 661—301.3(103A).”

Delete all references to the “International Residential Code” and insert in lieu thereof “rule 661—301.8(103A).”

Delete all references to the “International Fire Code” and insert in lieu thereof “state fire code.”

ITEM 11. Amend rule 661—301.8(103A) as follows:

**661—301.8(103A) Residential construction requirements.** The provisions of the International Residential Code, 2009 2015 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001, are hereby adopted by reference as the requirements for construction, alteration, movement,

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

Delete section R101.1.

Delete sections R103 to R114 and sections therein.

NOTE: The values for table R301.2(1) shall be determined by the location of the project and referenced footnotes from table R301.2(1).

Delete section R302.2 and insert in lieu thereof the following new section:

R302.2 Townhouses. Each townhouse shall be considered a separate building and shall be separated by fire-resistance-rated wall assemblies meeting the requirements of Section R302.1 for exterior walls.

Exception: A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be installed in accordance with rule 661—301.5(103A). Penetrations of electrical outlet boxes shall be in accordance with R302.4.

R302.2.1 Continuity. The fire-resistance-rated wall or assembly separating townhouses shall be continuous from the foundation to the underside of the roof sheathing, deck or slab. The fire-resistance rating shall extend the full length of the wall or assembly, including wall extensions through and separating attached enclosed accessory structures.

Delete chapter 11.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “International Mechanical Code” and insert in lieu thereof “state mechanical code.”

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

Delete all references to the “International Building Code” and insert in lieu thereof “rule 661—301.3(103A).”

Delete all references to the “International Fire Code” and insert in lieu thereof “state fire code.”

Delete section R310.1 and insert in lieu thereof the following new section:

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided, they shall have a sill height of not more than 44 inches (1118 mm) above an adjacent permanent interior standing surface. The adjacent permanent interior standing surface shall be no less than 36 inches wide and 18 inches deep and no more than 24 inches high. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

EXCEPTION: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m<sup>2</sup>).

Delete section R313.1.

NOTE: Deletion of section R313.1, which would have required the installation of sprinklers in newly constructed townhouses, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Delete section R313.2.

NOTE: Deletion of section R313.2, which would have required the installation of sprinklers in newly constructed one- and two-family residences, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

Amend section R322.1.7 by striking the words “Chapter 3 of the International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

Delete section R907.3 and insert in lieu thereof the following new section:

~~R907.3 Recovering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof coverings where any of the following conditions exist:~~

~~1. Where the existing roof or roof covering is water-soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.~~

~~2. Where the existing roof covering is wood shake, slate, clay, cement or asbestos cement tile.~~

~~3. Where the existing roof has two or more applications of any type of roof covering.~~

Delete chapter 24 and sections therein and insert in lieu thereof the following new section:

All fuel gas piping installations shall comply with rule 661—301.9(103A).

Delete chapters 25 to 33 and sections therein, except for section P2904, and insert in lieu thereof the following new section:

All plumbing installations shall comply with the state plumbing code as adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, ~~2009~~ 2015 edition, published by the International Code Council, ~~5203 Leesburg Pike, Suite 600, Falls Church, VA 22041~~ 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001. The manufacturer’s data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15)“e.”

Delete chapters 34 to 43 and sections therein and insert in lieu thereof the following new section:

All electrical installations shall comply with National Electrical Code, ~~2008~~ 2014 edition, as amended by rule 661—301.5(103A).

Delete appendices A through Q.

ITEM 12. Amend rule 661—301.9(103A) as follows:

**661—301.9(103A) Fuel gas piping requirements.** Fuel gas piping shall comply with the requirements of ~~661—Chapter 224 rule 641—25.3(105) and NFPA 54, ANSI Z223.1-2012, National Fuel Gas Code, 2012 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471.~~ Liquefied petroleum gas facilities and appliances shall comply with rule 661—226.1(101).

ITEM 13. Amend rule 661—301.10(103A) as follows:

**661—301.10(103A) Transition period.** A construction project which is subject to the provisions of any rule in 661—Chapter 301 or 661—Chapter 303 which requires compliance with provisions of the 2009 edition of any code published by the International Code Council, ~~5203 Leesburg Pike, Suite 600, Falls Church, VA 22041~~ 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001, may comply with the requirements established either in the edition of the code adopted herein or the requirements established in the edition of the same code previously in effect if the project is commenced ~~between January 1, 2014, and May 31, 2014~~ on or before June 30, 2016. “Commenced” shall mean that the submitter has obtained preliminary approval from the commissioner or a local building department pursuant to rule 661—300.6(103A) prior to July 1, 2016. If final approval for the project design has not been obtained prior to October 1, 2016, the project is subject to the provisions of 661—Chapters 301 and 303 in effect as of April 1, 2016.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 14. Amend rule **661—302.2(103A,104A)**, definition of “IBC 2009,” as follows:

“~~IBC 2009~~ 2015” means the International Building Code, ~~2009~~ 2015 edition, published by the International Code Council, ~~5203 Leesburg Pike, Suite 600, Falls Church, VA 22041~~ 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001.

ITEM 15. Amend rule **661—302.3(103A,104A)** as follows:

**661—302.3(103A,104A) Accessibility of buildings and facilities available to the public.** Buildings and facilities which are available to the public, other than places of worship, shall comply with one of the following:

**302.3(1)** Applicable provisions of ADASAD 2010, or

**302.3(2)** IBC ~~2009~~ 2015, Chapter 11 and applicable accessibility provisions contained in IBC ~~2009~~ 2015.

NOTE 1: Approval of construction plans based upon compliance with the applicable provisions of the International Building Code, ~~2009~~ 2015 edition, as provided, does not relieve the designer, builder, building owner, or building operator from responsibility under federal law to comply with all applicable provisions of the 2010 ADA Standards for Accessible Design.

NOTE 2: Amendments to requirements contained in the state of Iowa building code do not apply retroactively to existing construction. New amendments to the state building code apply only to construction which occurs on or after the effective date of the amendments.

ITEM 16. Amend rules **661—315.1(83GA,ch142)** to **661—315.3(83GA,ch142)**, parenthetical implementation statute, as follows:

(~~83GA,ch142~~ 103A)

ITEM 17. Amend rule **661—315.1(103A)** as follows:

**661—315.1(103A) Scope.** The standards adopted in this chapter shall apply to the design and construction of weather safe rooms constructed on or after ~~January 1, 2014~~ July 1, 2016. The rules in this chapter do not require the construction of a weather safe room or rooms for any construction project but establish standards for design and construction of weather safe rooms when their construction is required by another provision of law or is incorporated voluntarily in a construction project.

ITEM 18. Amend rule **661—315.3(103A)** as follows:

**661—315.3(103A) Requirements.** Any weather safe room constructed on or after ~~January 1, 2014~~ July 1, 2016, shall be designed and constructed in compliance with the provisions of ICC 500-~~2008~~ 2014, ICC/NSSA Standard for the Design and Construction of Storm Shelters, published by the International Code Council, 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001. Any provision which would apply to a hurricane safe structure but not to a tornado safe structure shall not apply. For any provision for which a distinction is made between a tornado safe structure and a hurricane safe structure, the requirement for a tornado safe structure shall apply.

**ARC 2265C**

**PUBLIC SAFETY DEPARTMENT[661]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 103A.7, 103A.11 and 103A.14, the Building Code Commissioner in the Department of Public Safety and the State Historical Society Board hereby give

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Notice of Intended Action to amend Chapter 350, "State Historic Building Code," Iowa Administrative Code.

The Building Code Commissioner in the Department of Public Safety is authorized to adopt administrative rules, and the State Historical Society Board is authorized to approve or disapprove the administrative rules, according to Iowa Code section 103A.41. This proposed amendment implements the policy of adopting the building code provisions provided in the most recent editions in the code cycle. A similar policy has been used with regard to plumbing and mechanical codes. The most recent editions of the codes used in the construction industry reflect current industry standards and promote consistency in the regulations affecting the construction industry.

A public hearing on the proposed amendment will be held on January 5, 2016, at 10 a.m. in the First Floor Public Conference Room (Room 125), Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa. Additional public hearings will be held at 11:30 a.m. on January 7, 2016, at Iowa State Patrol Post #12, 22365 20th Avenue, Stockton, Iowa, and at 11:30 a.m. on January 8, 2016, at Iowa State Patrol Post #3, 2025 Hunt Avenue, Council Bluffs, Iowa. Persons may present their views orally or in writing at the public hearings.

In addition, any written comments or information regarding the proposed amendment may be directed to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) by 4:30 p.m. on January 8, 2016.

Adoption of the 2015 International Existing Building Code (IEBC) is proposed because it is the most recent edition of industry standards and because its adoption promotes consistency of governing codes, eases the burden of planning and constructing buildings, and meets the business needs of the building industry while also meeting the expectations and needs of the public who use these buildings. The adoption of the 2015 IEBC will assist businesses, individuals and the construction industry by streamlining construction requirements in the state. Informal meetings have been held with stakeholders in the construction industry, who generally support the adoption of the most recent edition of the IEBC as it relates to historic buildings in the state of Iowa.

Rules regarding the building code are subject to the waiver provisions of rule 661—10.222(17A). The Commissioner and the Board do not have authority to waive requirements established by statute, according to Iowa Code section 103A.7.

After analysis and review of this rule making, there should be a positive impact on jobs. The Board will continue to work with stakeholders to maximize this rule making's positive impact on jobs. Any fiscal impact is expected to be minimal and less than \$100,000 annually or \$500,000 during the next five years.

This rule is intended to implement Iowa Code sections 103A.41 to 103A.45.

The following amendment is proposed.

Amend rule 661—350.1(103A) as follows:

**661—350.1(103A) Scope and definition.**

**350.1(1) and 350.1(2)** No change.

**350.1(3) Adoption.** The provisions of the International Existing Building Code, 2009 2015 edition, published by the International Code Council, ~~5203 Leesburg Pike, Suite 600, Falls Church, VA 22041~~ 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001, are hereby adopted as the alternative requirements for rehabilitation, preservation, restoration, repair, alteration, change of occupancy and relocation of and addition to historic buildings, with the following amendments:

Delete section 101.1.

Delete section 101.4.2 and insert in lieu thereof the following new section:

101.4.2 Buildings previously occupied. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

Delete section 101.5.4.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~Delete section 101.5.4.1.~~

~~Delete section 101.5.4.2.~~

~~Delete section 101.5.~~

~~Delete section 101.6.~~

~~Delete section 101.7.~~

Delete sections 103, 104, and 105 and sections therein.

Delete sections 106.1, ~~106.3.1, 106.3.3,~~ 106.3, 106.4, 106.5, and 106.6.

Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117 and sections therein.

Delete the definition of “historic building.”

~~Delete section 605.~~

~~Delete section 705.~~

~~Delete section 706.~~

~~Delete section 806.~~

~~Delete section 906.~~

~~Delete section 912.8.~~

~~Delete section 1012.8.~~

~~Delete section 1105.1.~~

~~Delete section 1205.15.~~

~~Delete appendix A, chapters A1 through A5, and appendix B.~~

Delete appendix B and insert in lieu thereof “Any building or facility subject to this Chapter shall comply with the provisions of 661—Chapter 302.”

~~Delete resource A.~~

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

~~Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2008 edition as amended by rule 661—301.5(103A).”~~

Delete all references to the “International Mechanical Code” and insert in lieu thereof “state mechanical code.”

Delete all references to the “International Building Code” and insert in lieu thereof “rule 661—301.3(103A).”

Delete all references to the “International Residential Code” and insert in lieu thereof “rule 661—301.8(103A).”

Delete all references to the “International Fire Code” and insert in lieu thereof “state fire code.”

EXCEPTION: A construction project subject to the provisions of this rule may comply with either the requirements adopted herein or the provisions of this rule as it was previously published if the project is commenced on or before ~~March 31, 2010~~ June 30, 2016.

NOTE 1: International Existing Building Code, 2009 2015 edition, Resource A, provides guidelines for evaluating fire ratings of archaic materials and assemblies which may be used by designers and code officials when evaluating compliance with provisions of this chapter.

NOTE 2: Except for elevators excluded from the jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89A.2, each elevator is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

NOTE 3: Except for boilers and pressure vessels excluded from the jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89.4, each boiler or pressure vessel is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Any boiler which is subject to requirements established by the Iowa department of natural resources is required to comply with any such requirements and is subject to enforcement of any applicable regulations by the Iowa department of natural resources.

This rule is intended to implement Iowa Code sections 103A.41 through 103A.45.

**ARC 2262C**

## **SECRETARY OF STATE[721]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 48A.19(3) and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 23, “Voter Registration in State Agencies,” Iowa Administrative Code.

The proposed amendments:

- Update the Voter Registration Commission’s contact information.
- Allow the Secretary of State’s office to keep an updated disposal calendar for National Voter Registration Act (NVRA) declination forms on the Secretary’s Web site, instead of in these rules.
- Add a new requirement that state agencies covered under the Iowa Voter Registration statute in Iowa Code chapter 48A track and report the number of acceptances and declinations of clients who are offered voter registration in compliance with Iowa Code chapter 48A, the enacting statute for the federal National Voter Registration Act of 1993.
- Provide for a narrow exemption regarding voter registration for agencies working with applicants who are minors under 17½ years of age and thus ineligible to register to vote. However, the requirement to offer voter registration opportunities to everyone else regardless of whether agencies know of issues that may impact the applicant’s right to vote will be maintained.

A public hearing will be held on December 23, 2015, at 8:30 a.m. in the Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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 Secretary of State’s office and advise of specific needs.

Written suggestions or comments should be directed to Eric Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319, on or before December 23, 2015.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-7550 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building on or before December 23, 2015.

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

These amendments are intended to implement Iowa Code section 48A.19.

The following amendments are proposed.

ITEM 1. Amend rule 721—23.3(48A) as follows:

**721—23.3(48A) Declination forms.** The offer of voter registration shall include a declination form in substantially the following form:

SECRETARY OF STATE[721](cont'd)

STATE OF IOWA  
Voter Registration Information

**You can apply to register to vote when you apply for assistance. This agency is required to offer you the chance to register to vote.**

**Registration Rules—You must be registered before you can vote in an election.**

To register to vote in Iowa you must—

- be a citizen of the United States
- be a resident of Iowa
- be at least 17½ years old (you must be 18 to vote)
- not have been convicted of a felony (or have had your rights restored)
- not currently be judged “mentally incompetent” by a court
- give up the right to vote in any other place.

Help: If you would like help in filling out the voter registration form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.

Benefits: Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.

Privacy: If you register to vote, the name of the office where you turn in the form will be kept private. If you do not register to vote, this fact will be kept private. This information will be used only for voter registration purposes.

Complaints: If you believe that someone has interfered with your right to

- register or to decline to register to vote,
- privacy in deciding whether to register,
- privacy in applying to register to vote,
- choose your own political party or other political preference,

you may file a complaint with:

Voter Registration Commission  
~~Level B~~ Office of the Secretary of State  
~~Hoover~~ Lucas State Office Building Telephone:  
 Des Moines, Iowa 50319 ~~(515)281-5781~~  
 Telephone: (515)281-0145

**If you are not registered to vote where you live now, would you like to apply to register to vote here today?**

- Yes**, I want to register to vote.  
 **No**, I do not want to register to vote.

If you do not check either box, you will be considered to have decided not to register to vote at this time.

Sign here: X \_\_\_\_\_

Print your name: \_\_\_\_\_

Date: \_\_\_\_\_

ITEM 2. Amend rule 721—23.4(48A) as follows:

**721—23.4(48A) Electronic declination records.**

**23.4(1)** The agency may offer the opportunity to register to vote orally and record the applicant’s responses electronically. The agency shall ask each applicant the following questions:

## SECRETARY OF STATE[721](cont'd)

“Did you receive a copy of the Voter Registration Information brochure?” If the applicant has not received it, the agency shall provide the applicant with a copy of the brochure and shall review it with the applicant. Then the applicant shall be asked the following question:

“If you are not registered to vote where you live now, would you like to apply to register to vote here today?” (The applicant may answer yes or no. If the applicant does not answer, the applicant shall be presumed to have declined to register to vote.)

**23.4(2)** The agency shall track the results of its voter registration activities in a form prescribed by the secretary of state’s office. The agency shall report those totals in the prescribed format to the elections division of the secretary of state’s office.

**23.4(3)** The secretary of state’s office shall make the information available upon request.

ITEM 3. Amend rule 721—23.5(48A) as follows:

**721—23.5(48A) Retention and storage of declination forms.** Declination forms shall be retained by the agency receiving them for 22 months after the next general election following receipt of the form. Declination forms signed during the ten days before a general election, when registration is closed, shall be retained for 22 months after the general election to be held in two years. The forms shall be stored in a secure location where the safety and confidentiality of the records can be protected. If the applicant’s responses are stored electronically, the declination record shall be retained by the agency for the same period of time required for paper declination forms. ~~The following schedule shall be followed:~~ The secretary of state’s office shall maintain on its Web site a schedule for disposal of declination forms.

<u>Date declination signed</u>	<u>Election date</u>	<u>Earliest date to destroy</u>
10/24/04—10/28/06	11/07/06	09/07/08
10/29/06—10/26/08	11/04/08	09/04/10
10/27/08—10/23/10	11/02/10	09/02/12
10/24/10—10/27/12	11/06/12	09/06/14
10/28/12—10/25/14	11/04/14	09/04/16

ITEM 4. Amend rule 721—23.6(48A) as follows:

**721—23.6(48A) Distribution of voter registration forms.** ~~Every person~~ All persons, except those exempted by rule 721—23.10(48A), who receives receive an application for services or assistance from a designated voter registration agency shall be given, along with the application, a voter registration form and the declination form described in rule 721—23.3(48A).

ITEM 5. Amend rule 721—23.10(48A) as follows:

**721—23.10(48A) Ineligible applicants.**

**23.10(1) Ineligible minor applicants.** An agency that has applicants who are ineligible to vote because they are minors shall not offer an opportunity to register to vote to applicants who the agency has validated are under the age of 17½. The agency must still offer information about voter registration to all applicants.

**23.10(2) All other ineligible applicants.** ~~The~~ Except for those applicants specifically described in subrule 23.10(1), the opportunity to register to vote must be offered to every applicant. The applicant, not the agency, is responsible for determining the applicant’s eligibility to register to vote. The agency shall accept a registration form even if it is submitted by an applicant the agency believes to be ineligible to register to vote.

Applicants who are not accepted for services or assistance by an agency shall be offered the opportunity to register to vote. Even if the applicant will not receive services or assistance from the agency, voter registration forms shall be processed and transmitted not later than the final working day of the week to the appropriate county commissioner of elections as required by Iowa Code section 48A.21.

**ARC 2269C****SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 48A.38 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

This amendment is intended to allow the Secretary of State’s office to retain fees generated by voter registration list requests within the office, which fees will be used toward ensuring that the program becomes self-sustaining.

This amendment was approved by the Voter Registration Commission on October 26, 2015.

Public comment must be received by December 15, 2015. Written suggestions or comments should be directed to Eric Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-7550 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

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

This amendment is intended to implement Iowa Code section 48A.38.

The following amendment is proposed.

Amend subrule 28.2(2) as follows:

**28.2(2)** Fees shall be assessed by the state registrar and county registrars for voter registration information provided to the public or to authorized requesters consistent with Iowa Code chapter 48A and the rules of the voter registration commission. The state registrar shall establish appropriate forms for voter registration information requests. ~~Fees collected by the state registrar shall be deposited in the state general fund.~~ The state registrar shall collect and retain the fees authorized under Iowa Code section 48A.38. Fees collected by county registrars shall be deposited in the appropriate county fund.

**ARC 2248C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 306.6A and 307.12 and section 307A.2 as amended by 2015 Iowa Acts, House File 635, section 20, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 101, “Farm-to-Market Review Board,” Iowa Administrative Code.

The proposed amendments update the years associated with the Farm-to-Market Review Board’s rotation cycle, correct the location of where the meeting agenda is posted and remove outdated language.

The Farm-to-Market Review Board approved these proposed amendments during its meeting on July 7, 2015.

TRANSPORTATION DEPARTMENT[761](cont'd)

These rules do not provide for 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.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Office of Policy and Legislative Services no later than December 15, 2015.

A meeting to hear requested oral presentations is scheduled for Thursday, December 17, 2015, at 10 a.m. at the Administration Building, First Floor South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

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

These amendments are intended to implement Iowa Code sections 306.6 and 306.6A.

The following amendments are proposed.

ITEM 1. Amend subrule 101.3(1) as follows:

**101.3(1)** The farm-to-market review board shall be composed of 12 county engineers selected by the Iowa county engineers association. Two members shall be selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members shall serve six-year terms. Rotations shall be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members shall further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. ~~Initial board~~ Board rotation shall be as follows and shall be extended in future years in the same pattern:

Year	Rotation	
<del>2000</del> <u>2015</u>	District 1 Representative A	District 4 Representative A
<del>2004</del> <u>2016</u>	District 2 Representative A	District 5 Representative A
<del>2002</del> <u>2017</u>	District 3 Representative A	District 6 Representative A
<del>2003</del> <u>2018</u>	District 1 Representative B	District 4 Representative B
<del>2004</del> <u>2019</u>	District 2 Representative B	District 5 Representative B
<del>2005</del> <u>2020</u>	District 3 Representative B	District 6 Representative B

ITEM 2. Amend subrule 101.4(2) as follows:

**101.4(2)** The farm-to-market review board is required to follow the provisions of Iowa Code chapter 21 with regard to open meetings. The chair shall post a meeting agenda on the “~~Service Bureau Bulletin Board~~” Iowa County Engineers Association Service Bureau Web site and send copies of the agenda to all counties.

ITEM 3. Amend subrule 101.4(3) as follows:

**101.4(3)** Minutes of each meeting shall be kept; the chair shall be responsible for the minutes. Meetings may be ~~tape~~ recorded to facilitate the preparation of meeting minutes, but any ~~tapes~~ recordings made shall not be retained after the minutes have been completed.

**TREASURER OF STATE**

**Notice—Public Funds Interest Rates**

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for November is 4.25%.

**INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS**

74A.2 Unpaid Warrants .....	Maximum 6.0%
74A.4 Special Assessments .....	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective November 10, 2015, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

**TIME DEPOSITS**

7-31 days .....	Minimum .05%
32-89 days .....	Minimum .05%
90-179 days .....	Minimum .05%
180-364 days .....	Minimum .05%
One year to 397 days .....	Minimum .05%
More than 397 days .....	Minimum .30%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

**ARC 2246C**

**VOTER REGISTRATION COMMISSION[821]**

**Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 47.8, 48A.13, and 17A.3, the Voter Registration Commission hereby gives notice that a public hearing will be held on December 23, 2015, at 8:30 a.m. in the Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa. The purpose of the public hearing is to receive oral or written comments on proposed amendments to Chapter 2, "Voter Registration Forms, Acceptability, Registration Dates, and Effective Dates," Chapter 8, "Transmission of Registration Forms by Agencies," and Chapter 11, "Registration Procedure at the

## VOTER REGISTRATION COMMISSION[821](cont'd)

Office of Driver Services, Department of Transportation,” Iowa Administrative Code, regarding online voter registration through the Iowa Department of Transportation’s Web site.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

The proposed amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2160C**.

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

**ARC 2261C****VOTER REGISTRATION COMMISSION[821]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 48A.39 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 3, “Lists of Registered Voters,” Iowa Administrative Code.

This amendment is intended to define the term “political purposes” under Iowa Code section 48A.39. This definition clarifies a wide range of legitimate uses, including those typically undertaken by political parties, academic institutions, and media organizations.

Public comment must be received by December 15, 2015. Written suggestions or comments should be directed to Eric Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-7550 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

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

This amendment is intended to implement Iowa Code section 48A.39.

The following amendment is proposed.

Amend rule 821—3.2(48A) as follows:

**821—3.2(48A) Request for list.**

**3.2(1) Requests.** A request for a list of registered voters may be made in writing on a Specifications for Voter List form submitted to either a county commissioner or the state registrar. A commissioner or the registrar may accept a request for a list made via telephone provided the commissioner or registrar is confident that both the requester and the commissioner or registrar clearly understand the specifics of the request and provided the requester agrees that the voter registration information will only be used for the purposes set forth in Iowa Code section 48A.39. If a request is unclear or ambiguous, the commissioner or registrar may require that the request be submitted in writing.

**3.2(2) Definition.** The term “political purpose” means research, advocacy, or education relating to the election, administration, or governance of public policies or officials.

## ARC 2267C

## ADMINISTRATIVE SERVICES DEPARTMENT[11]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services (DAS) amends Chapter 41, "Auditing Claims," Chapter 42, "Accounting Procedures of Public Impact," Chapter 54, "Recruitment, Application and Examination," Chapter 56, "Filling Vacancies," Chapter 64, "Benefits," Chapter 117, "Procurement of Goods and Services of General Use," and Chapter 119, "Uniform Terms and Conditions for Service Contracts," Iowa Administrative Code.

The Department is continuing the effort to review its administrative rules in accordance with Iowa Code section 17A.7 by amending certain departmental rules to eliminate outdated provisions and conflicts with statute and by making other changes that reflect and clarify departmental practice.

The Department does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Department's general rules concerning waivers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 16, 2015, as **ARC 2145C**. A public comment was received regarding ridesharing as a work-related expense. No changes were made to the amendments published under Notice.

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

These amendments are intended to implement Iowa Code chapter 8A.

These amendments will become effective December 30, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 11—41.4(8A) as follows:

**11—41.4(8A) Authorization for travel.**

**41.4(1)** *Approval by administrative head of the agency.* All official travel shall be authorized by the administrative head of the agency or the designated representative, prior to the travel whenever possible. ~~This applies to in-state travel which is not subject to executive council approval.~~

**41.4(2)** *Out of state.* Official travel out of the state for any executive branch employee must receive prior approval in writing from the executive council of the state except those employees exempt from executive council approval pursuant to Iowa Code Supplement section 8A.512 or other specific statutory exemptions electronic authorization on the Travel Department Authorization form from the administrative head of the agency.

**41.4(3)** *Requests for out-of-state travel.* All requests for out-of-state travel shall be on a form approved by the ~~executive council~~, administrative head of the agency and shall include information as ~~the council deems necessary~~ required by Iowa Code section 8A.512A.

**41.4(4)** No change.

ITEM 2. Amend paragraph **41.5(4)“b”** as follows:

*b. Out of state.* If the traveler desires to use a personally owned vehicle instead of common carrier and it is authorized by the ~~executive council~~ administrative head of the agency, the cost of mileage (not to exceed airfare) to the destination's nearest air terminal, plus expenses incurred to final destination and subsistence allowance en route will be allowed. Out-of-state subsistence allowance will be allowed only for the number of meals and nights lodging which would have been necessary had the traveler used the available public transportation to destination instead of a private vehicle. Taxi or mileage expenses will be allowed at the destination if the expenses are incurred while the traveler is on official business.

If two or more travelers on official business travel in one privately owned vehicle instead of common carrier, the use of one vehicle may be authorized on a mileage basis not to exceed the statutory limit per mile.

ITEM 3. Amend rule 11—42.1(8A), introductory paragraph, as follows:

**11—42.1(8A) Scope and application.** The department of administrative services, state accounting enterprise, is responsible for the payment of money due based on contracts with vendors for goods

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

and services entered into by all state agencies and governmental subdivisions. Consequently, the department has implemented rules and policies to ease the administration of the payment of all obligations owed to third parties. The policies and procedures governing the payment of these obligations are set forth in the Department of Administrative Services, State Accounting Enterprise, Accounting Policies and Procedures Manual. This manual may be accessed ~~on the state of Iowa Web site located at [http://das.sae.iowa.gov/internal\\_services/policy\\_manual.html](http://das.sae.iowa.gov/internal_services/policy_manual.html)~~ [das.iowa.gov](http://das.iowa.gov), or copies of the appropriate provisions may be requested and obtained by mail from State Accounting Enterprise, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. Provisions of the manual that affect persons outside state government are as follows:

ITEM 4. Adopt the following **new** paragraphs **54.5(2)“e”** and **“f”**:

*e.* Veterans' preference points outlined in Iowa Code section 8A.413(22) shall be applied as a percentage of the grade or score attained in qualifying examinations.

*f.* The percentage points shall be given only upon a veteran's passing the examination and shall not be the determining factor in passing. Veterans' preference percentage points shall be applied once to the final scores used to rank applicants for selection for an interview.

ITEM 5. Amend rule 11—56.5(8A) as follows:

**11—56.5(8A) Expiration of a list.** The expiration of a list shall be ~~90~~ 120 calendar days following the date of issue unless otherwise approved by the director. All appointments or promotions must be reported to the director before the expiration date of the list. Effective dates of appointments or promotions must be no later than 60 days after the expiration date of the list unless otherwise authorized by the director, except that appointments or promotions “pending graduation” or “pending license” shall be allowed to be effective up to nine months following the expiration date of the list.

ITEM 6. Amend paragraph **64.10(2)“a”** as follows:

*a.* Assistance ~~may be approved~~ for meeting continuing education requirements may be approved when necessary to maintain the assistance is applied toward maintaining a professional registration, certification, or license and the workshop, seminar, or conference is related to the duties and responsibilities of the employee's position.

ITEM 7. Amend paragraph **117.11(1)“b”** as follows:

*b.* With the exception of requests for proposals (RFPs) which are approved by the technology governance board, procurement of all information technology devices and services, projects and outsourcing of \$50,000 or more or a total involvement of 750 participating agency staff hours or more must receive prior approval from the ~~department of administrative services, information technology enterprise (DAS/ITE),~~ office of the chief information officer (OCIO) before a participating agency issues a competitive selection document or any other procurement document or otherwise seeks to procure information technology devices or services or both through the department or on its own purchasing authority. The participating agency's approval request shall be in a form prescribed by the department.

ITEM 8. Rescind paragraph **117.11(2)“k.”**

ITEM 9. Amend subrule 117.15(1) as follows:

**117.15(1) Agency direct purchasing—basic level.** An agency may procure non-master agreement goods costing up to \$1,500 without competition. An agency shall procure non-master agreement goods ~~or services~~ costing between \$1,501 and \$5,000 in a competitive manner, using either informal or formal competition. If an informal process is chosen, the agency shall follow the process described in the definition of “informal competition” in rule 11—117.2(8A). The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format.

ITEM 10. Amend subrule 117.17(1), introductory paragraph, as follows:

**117.17(1) Vendor on-line registration.** Vendors are encouraged to register electronically using the vendor on-line system ~~when it becomes available~~. Vendors that are registered on the vendor on-line

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

system are eligible for all services at the site, including receiving electronic notices of solicitations and submitting an electronic response to a solicitation.

ITEM 11. Amend subrule 119.4(1), introductory paragraph, as follows:

**119.4(1) *Payment clause.*** The contract shall include a clause or clauses describing the amount or basis for paying consideration to the party based on the party's performance under the service contract. The payment clause(s) should be designed to work in harmony with any monitoring clauses and any postcontract review procedures. All payment clauses shall be consistent with ~~2003~~ Iowa Code Supplement section 8A.514. The payment clause(s) should also be designed to work in harmony with the outputs, outcomes or any combination thereof desired by a department or establishment. The payment clause should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable kinds of payment clauses include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

[Filed 11/4/15, effective 12/30/15]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2268C**

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 19B.7(1)“b,” the Department of Administrative Services (DAS) adopts new Chapter 121, “Contract Compliance,” Iowa Administrative Code.

The Department in accordance with Iowa Code section 19B.7 adopts new Chapter 121 to administer and promote equal opportunity in all state contracts and services and to prohibit discrimination in the provision of state contracts.

The Department does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Department's general rules concerning waivers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 16, 2015, as **ARC 2144C**. No public comment was received. No changes were made to the amendment published under Notice.

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

This rule is intended to implement Iowa Code section 19B.7.

This rule will become effective December 30, 2015.

The following amendment is adopted.

Adopt the following **new** 11—Chapter 121:

CHAPTER 121  
CONTRACT COMPLIANCE

**11—121.1(19B) Policy.** It is the policy of the state of Iowa to promote equal opportunity in all state contracts and services and to provide leadership in affirmative action to ensure fair and equitable participation within all programs receiving or benefiting from state financial assistance in whole or in part. Therefore, no individual, except as specifically authorized by law, shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program receiving or benefiting from state financial assistance because of race, creed, color, religion, sex, national origin, age, or physical or mental disability as authorized by rule.

**121.1(1) *Nondiscrimination in employment by contractors and subcontractors.***

*a.* Every official who is authorized to enter into contracts or subcontracts for public works or for goods or services shall cause to be inserted into every contract or subcontract a clause prohibiting the

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

contractor or subcontractor from engaging in discriminatory employment practices forbidden by federal and state law, executive orders and rules of the department of administrative services, which pertain to equal employment opportunity and affirmative action.

*b.* Every state official who is responsible to the governor and who is authorized to enter into contracts or subcontracts for public works or for goods or services shall cause to be inserted into every contract a clause which states that the contractor or subcontractor may be required to have on file a copy of the affirmative action program, containing goals and time specifications. These contractual provisions shall be fully enforced. Any breach of the provisions shall be regarded as a material breach of contract.

*c.* Each state contract shall provide that compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the department of administrative services prior to the execution of the contract shall be a condition of the contract or agreement binding upon the contractor or service provider, its successors, and assignees. The contract shall further provide that failure to fulfill the nondiscrimination requirements of this contract or any of the rules and orders may cause the contract to be canceled, terminated, or suspended in whole or in part, and the contractor or service provider may be declared ineligible for future state contracts in accordance with authorized procedure or the contractor may be subject to other sanctions as provided by law or rule.

**121.1(2) Monitoring.** Central procurement shall monitor procurement by state agencies to ensure compliance with this chapter.

This rule is intended to implement Iowa Code section 19B.7.

[Filed 11/4/15, effective 12/30/15]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2254C****ALCOHOLIC BEVERAGES DIVISION[185]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 16, "Trade Practices," Iowa Administrative Code.

The amendments rescind rule 185—16.7(123) and adopt three new rules on tasting, sampling, and trade spending. The amendments define terms and explain each subject matter in greater detail to provide clarity to the reader.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 19, 2015, as **ARC 2106C**. A meeting to hear requested oral presentation, scheduled for September 8, 2015, was canceled without notice because no request was made.

The Division received written comments from four interested parties. Upon careful review of the comments received, the Division made changes to the proposed amendments as published under Notice of Intended Action to be more reflective of the modern marketplace and to further clarify intent for the reader. Specifically, changes have been made to the following: Subparagraphs 16.7(1)"a"(1) to (4) have been changed to increase the number of servings of liquor, wine, beer or high alcoholic beer, and mixed drink or cocktail that may be offered per person during a tasting event; new paragraph 16.7(1)"d" has been added to clarify that product served by an industry member in a tasting event shall be limited to the brands the industry member represents; paragraph 16.7(3)"a" has been rewritten to address the manner in which an industry member may participate in a tasting event that is conducted by a retailer by incorporating the substance of paragraph 16.7(3)"g," which has been eliminated in its entirety; paragraph 16.7(3)"d" has been rewritten to clarify how product used during a tasting conducted by a retailer is to be obtained by the retailer; and subrule 16.8(4) has been changed to clarify how a container of product used for sampling shall be identified.

Changes suggested in three of the written comments received by the Division were not incorporated into the adopted amendments because the suggested changes would create a conflict with current law,

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

would introduce new subject matter, or were deemed unnecessary. Specifically, a request to amend subparagraphs 16.7(2)“b”(1) and (3) to allow the tasting of alcoholic liquor in an unlicensed public place was not granted because of the prohibition in Iowa Code section 123.46, subsection 2; a request to amend paragraphs 16.7(2)“a” and “b” to allow the use of consumer souvenirs and advertising in conjunction with a tasting event was not granted because the subject matter is unrelated to new rule 185—16.7(123) and should be addressed in a separate rule making; and a request to modify subrule 16.8(1) was deemed unnecessary because the subrule is sufficient to address the concerns of the interested party and to accommodate the needs of the modern marketplace.

These amendments do not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

The Alcoholic Beverages Commission adopted these amendments on October 20, 2015.

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

These amendments are intended to implement Iowa Code chapter 123.

These amendments will become effective on December 30, 2015.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **185—16.1(123)**:

“*Brand*” means each alcoholic liquor, wine, beer, or high alcoholic content beer packaged and sold under a separate name, class, type, or kind designation (wine appellation of origin, wine vintage date, alcoholic liquor age, percentage of alcohol, etc.).

“*Product*” means alcoholic liquor, wine, beer, or high alcoholic content beer as defined in Iowa Code chapter 123.

“*Sampling*” means the practice of industry members giving product to a retailer for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Tasting*” means the presentation and serving of a product by industry members or retailers to consumers for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Trade spending*” means the practice of industry members promoting their brand by purchasing alcoholic beverages for consumers where alcoholic beverages are sold and served for on-premises consumption.

ITEM 2. Rescind rule 185—16.7(123) as follows:

~~**185—16.7(123) Tastings, samplings and trade spending.** An industry member may conduct tastings in a retail establishment, provided that the tasting has the indicia of a tasting and is not a subterfuge to provide a retailer with free merchandise. An industry member may provide samples of alcoholic liquor, wine or beer to a retailer who has not previously purchased the brand from the industry member provided that the quantities of any brand of beer do not exceed 3 gallons; of wine, 3 liters; of alcoholic liquor, 500 milliliters. An industry member may engage in the practice of trade spending (purchasing one round of alcoholic or nonalcoholic beverages for patrons of an on-premises retail establishment). An industry member who engages in trade spending is prohibited from paying the retailer more than the ordinary and customary charge for the beverages.~~

~~This rule is intended to implement Iowa Code section 123.186.~~

ITEM 3. Adopt the following **new** rules 185—16.7(123), 185—16.8(123) and 185—16.9(123):

**185—16.7(123) Tasting.**

**16.7(1) Restrictions.**

a. The amount of product served per person during a tasting shall be limited to the following.

- (1) No more than two one half of one-fluid-ounce tastes of any brand of alcoholic liquor.
- (2) No more than two one-fluid-ounce tastes of any brand of wine.
- (3) No more than two two-fluid-ounce tastes of any brand of beer or high alcoholic content beer.
- (4) No more than two two-fluid-ounce tastes of a mixed drink or cocktail as defined in

185—paragraph 4.5(1)“b.”

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

b. Product shall not be served to, or allowed to be consumed by, any consumer who is under legal age, intoxicated, or simulating intoxication.

c. Product served during a tasting shall not be served by persons under 18 years of age.

d. Product served by an industry member shall be limited to the brands the industry member represents.

**16.7(2) *Tastings conducted by an industry member.*** An industry member may conduct a tasting on licensed and unlicensed premises, subject to the requirements and restrictions provided in this rule.

a. *Licensed premises.*

(1) A tasting may be conducted on licensed premises where alcoholic beverages are sold or served.

(2) A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

(3) A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

(4) An industry member may provide snack foods or hors d'oeuvres for the participants at the tasting.

(5) Product or food served during a tasting shall either be provided by the industry member or purchased at no more than the ordinary retail price from the license or permit holder on whose premises the tasting is being held.

(6) Any product or food remaining at the end of a tasting shall be removed from the licensed premises by the industry member.

b. *Unlicensed premises.*

(1) A tasting of wine, beer, or high alcoholic content beer may be conducted in an unlicensed public place unless prohibited by Iowa Code section 123.46(2) or an applicable ordinance or regulation of the local authority.

(2) A tasting of alcoholic liquor, wine, beer, or high alcoholic content beer may be conducted in an unlicensed private place as defined in 185—subrule 4.23(4).

(3) A tasting of alcoholic liquor is prohibited in an unlicensed public place.

(4) Wine, beer, and high alcoholic content beer served during a tasting shall be obtained from the respective wholesaler.

(5) An industry member may provide snack foods or hors d'oeuvres for the participants at the tasting.

(6) Any product or food remaining at the end of a tasting shall be removed from the premises by the industry member.

**16.7(3) *Tastings conducted by a retailer.*** A retailer licensed or permitted for on- or off-premises consumption may conduct a tasting, subject to the requirements and restrictions provided in this rule.

a. Product served during a tasting shall be served by a retailer, the retailer's employees or agents, or an industry member who has the explicit consent of the retailer.

b. A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

c. A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

d. Product served during a tasting shall be legally obtained by the retailer as prescribed by Iowa Code chapter 123.

e. An off-premises license or permit holder may conduct a tasting when there is no charge for product or access.

f. Food may be provided by the retailer for the participants of a tasting.

**16.7(4) *Record keeping.*** An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

**185—16.8(123) Sampling.**

**16.8(1) Conditions.** An industry member may give product to a retailer who has not purchased the brand from that industry member within the preceding 12 months.

**16.8(2) Quantity.** Product given to a retailer shall not exceed the following amounts within a calendar year.

- a. Three liters of any brand of alcoholic liquor.
- b. Three liters of any brand of wine.
- c. Three gallons of any brand of beer or high alcoholic content beer.

**16.8(3) Procurement.** An industry member shall obtain alcoholic liquor, wine, beer, or high alcoholic content beer used for sampling from the respective wholesaler.

**16.8(4) Identification.** Each container of product used for sampling shall be clearly marked with the word "SAMPLE". The marking shall not obscure the label of the container.

**16.8(5) Record keeping.** An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

**185—16.9(123) Trade spending.** An industry member may engage in the practice of trade spending.

**16.9(1) Advertising.** Trade spending shall be unannounced and unpublicized.

**16.9(2) Quantity.** The industry member shall be limited to purchasing one round of alcoholic beverages or nonalcoholic beverages for patrons of an on-premises retailer.

**16.9(3) Payment.** The industry member shall pay the retailer no more than the ordinary retail price for the alcoholic beverage or nonalcoholic beverage.

**16.9(4) Record keeping.** An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

[Filed 11/3/15, effective 12/30/15]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2256C**

## **CORRECTIONS DEPARTMENT[201]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.804, the Department of Corrections hereby amends Chapter 37, "Iowa State Industries," Iowa Administrative Code.

With these amendments, Iowa State Industries updates rules on routine matters such as addresses, hours of operation, and location of product catalogs. The amendments also clarify that products may be sold to contractors when the products will be sold to a public entity, adopt by reference the provisions of Department of Administrative Services' rules dealing with procurement of goods and services, and add a definition governing private sector employment of offenders.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2161C**. A public hearing was held on October 20, 2015, from 11 a.m. to 1 p.m. in the Department of Corrections conference room. One stakeholder attended the public hearing but did not offer comments. One written comment was received. Based on comments received, no changes were made to the amendments published under Notice of Intended Action. After staff review, however, in Item 1, the name of the board was corrected in the last sentence of subrule 37.2(5).

These rules do not provide for waivers in specified situations. An agencywide waiver provision is provided in 201—Chapter 7.

These amendments were approved during the November 4, 2015, meeting of the Iowa Prison Industries Advisory Board.

## CORRECTIONS DEPARTMENT[201](cont'd)

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

These amendments are intended to implement Iowa Code section 904.804.

These amendments will become effective on December 30, 2015.

The following amendments are adopted.

ITEM 1. Adopt the following new subrule 37.2(5):

**37.2(5)** Iowa state industries may sell products to a general contractor when the products purchased will be sold to a public entity as provided in subrules 37.2(1) to 37.2(3). The public entity shall submit a written request to Iowa state industries specifying the products and quantities to be purchased. Such sales shall be limited to contractors involved in construction, renovation, and remodeling projects. Sales to a general contractor shall be approved by the Iowa prison industries advisory board.

ITEM 2. Rescind rules 201—37.3(904) and 201—37.4(904) and adopt the following new rules in lieu thereof:

**201—37.3(904) Catalogs.** Catalogs are available online at the Iowa state industries Internet home page <http://www.iaprisoinind.com>, or at the Iowa state industries showroom located at 1445 East Grand Avenue, Des Moines, Iowa 50316. Requests for mailed copies may be sent to the Iowa state industries showroom address.

**201—37.4(904) Offices.** The showroom and main office for Iowa state industries are located at 1445 East Grand Avenue, Des Moines, Iowa 50316; telephone (515)242-5778. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

ITEM 3. Amend rule 201—37.7(904) as follows:

**201—37.7(904) Procurement of goods and services.** The provisions of 11—Chapter ~~405~~ 117 are hereby adopted by reference with the following amendments.

1. Strike “Department of Administrative Services” and insert in lieu thereof “Iowa State Industries” in all rules except rule ~~11—105.10(8A)~~ 11—117.11(8A), which pertains to procurement of information technology devices and services.

2. In lieu of the definitions of “Department” and “Director,” insert the following:

“Department” means the division of Iowa state industries.

“Director” means the director of the division of Iowa state industries or the director’s designee.

3. ~~Rules 11—105.6(8A), 11—105.13(8A), and 11—105.15(8A) are not adopted.~~ Rules 11—117.7(8A) and 11—117.15(8A) and subrule 117.4(3) are not adopted.

4. In lieu of the text of ~~11—subrule 105.14(1)~~ 117.14(1), insert the following: “Purchase of goods. An agency may acquire goods not otherwise available through a master agreement in accordance with the procurement threshold guidelines in ~~11—105.3(8A)~~ subrule 117.5(3).”

5. In lieu of the text of rule ~~11—105.20(8A)~~ 117.20(8A), insert the following: “Appeal process. Vendors may appeal actions by Iowa state industries under these rules as follows:

“Step 1. Appeals shall be filed in writing to the Business Manager, Iowa State Industries, 406 North High Street, Anamosa, Iowa 52205, within ~~five~~ 5 working days of notification of the action being appealed. The appeal shall state the specific grounds upon which the vendor is challenging the action. The business manager, Iowa state industries, shall notify the vendor in writing of the decision within 10 working days.

“Step 2. If the appeal is not resolved, it may be further appealed by the vendor to the Director of Iowa State Industries, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ten 10 working days of the notification of the Step 1 appeal response. The director of Iowa state industries shall notify the vendor in writing of the decision within 15 working days.

“Step 3. An unresolved appeal to the Director of Iowa State Industries shall be referred to the Director of the Department of Corrections, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines,

CORRECTIONS DEPARTMENT[201](cont'd)

Iowa 50319, within ~~ten~~ 10 working days of the notification of the Step 2 appeal response. The director of the department of corrections shall notify the vendor in writing of the decision within 15 working days."

This rule is intended to implement Iowa Code section 904.813.

ITEM 4. Amend subrule 37.8(1) as follows:

**37.8(1) Rules of procedure.** The seven-member prison industries advisory board is represented by five appointees of the governor, one appointee of the parole board, and one appointee of the director, department of corrections. The principal duties of the advisory board are to promulgate and adopt rules and to advise the director, Iowa state industries, regarding the management of Iowa state industries.

a. A quorum shall consist of five members.

b. When a quorum is present, a position is carried by a majority of the members of the board.

c. The board shall meet at least once per calendar quarter. The meetings will be held at the seat of government unless notification is given otherwise. Other meetings shall be held at the call of the chairperson or of any three members when necessary for the board to discharge its duties.

~~(1) The communications media shall be notified at least two weeks in advance of board meetings.~~

(1) Notice of the meetings shall be given pursuant to Iowa Code chapter 21.

(2) When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

d. Copies of the minutes are kept on file in the office of the director, Iowa state industries. Minutes are available from the director's office to interested persons upon request. Organizations may request to be placed on a mailing list. Copies of administrative rules and other materials considered are made a part of the minutes by reference.

e. In cases not covered by these rules, Robert's Rules of Order shall govern.

ITEM 5. Amend rule 201—37.9(904) as follows:

**201—37.9(904) Private sector employment projects.**

**37.9(1) Definitions.**

"Advisory board" means the prison industries advisory board.

"Deputy director of prison industries" means the department of corrections deputy director responsible for the day-to-day operations of prison industries including private sector individuals.

"Director" means the chief executive officer of the department of corrections.

"Wage range" means the wage paid that is commensurate to wages paid to persons in similar jobs outside the correctional institution.

"Workforce development board" means the state workforce development board.

"Workforce development director" means the chief executive officer of the department of workforce development.

**37.9(2) to 37.9(9)** No change.

This rule is intended to implement Iowa Code section 904.809.

[Filed 11/4/15, effective 12/30/15]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

## ARC 2270C

**HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DEPARTMENT[605]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Department hereby amends Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The adopted amendments implement 2015 Iowa Acts, House File 651, which amends Iowa Code chapter 34A, as well as adopt the latest revision of the "Wireless NG911 Implementation and Operations Plan." These amendments focus on the plan as well as changes to the emergency communications service surcharge distribution process.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2154C** on September 30, 2015. A public hearing was held on October 20, 2015. No public comment was received during the public comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Homeland Security and Emergency Management Department adopted these amendments on November 4, 2015.

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

These amendments are intended to implement Iowa Code chapter 34A as amended by 2015 Iowa Acts, House File 651.

These amendments will become effective December 30, 2015.

The following amendments are adopted.

ITEM 1. Amend rule **605—10.2(34A)**, definition of "Emergency call," as follows:

*"Emergency call"* means a telephone request or text message request for service which requires immediate action to prevent loss of life, reduce bodily injury, prevent or reduce loss of property and respond to other emergency situations determined by local policy.

ITEM 2. Amend subrule 10.7(2) as follows:

**10.7(2) Adoption by reference.** The "Wireless NG911 Implementation and Operations Plan," effective ~~July 1, 2013~~ August 30, 2015, and available from the Homeland Security and Emergency Management Department, ~~7105 NW 70th Avenue, Camp Dodge, Bldg. W-4 Johnston~~ 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference effective ~~June 18, 2014~~ December 30, 2015.

ITEM 3. Amend subrule 10.8(5) as follows:

**10.8(5)** Surcharge funds shall be remitted on a calendar quarter basis by the close of business on the twentieth day following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Homeland Security and Emergency Management Department, ~~7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston~~ 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50131 50324.

ITEM 4. Amend subrule 10.9(3) as follows:

**10.9(3)** Moneys in the fund shall be expended and distributed in the order and manner as follows:

a. An amount as appropriated by the general assembly shall be allocated to the homeland security and emergency management department for implementation, support, and maintenance of the functions of the E911 program and to employ the auditor of the state to perform an annual audit of the wireless E911 emergency communications fund.

b. The program manager shall allocate 10 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC's letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph. This allocation is for the period beginning July 1, 2013, and ending June 30, 2026.

~~b. c.~~ The program manager shall reimburse local communications service providers on a calendar quarter basis for their expenses for transport costs between the wireless E911 selective router and the public safety answering points related to the delivery of wireless E911 service.

~~e. d.~~ The program manager shall reimburse local communications service providers and third-party E911 automatic location information (ALI) database providers on a calendar quarter basis for the costs of maintaining and upgrading the E911 components and functionalities between the input and output points of the wireless E911 selective router. This includes the wireless E911 selective router and the automatic location information (ALI) database.

~~d.~~ The program manager shall allocate 13 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC's letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph. This allocation is for the period beginning July 1, 2013, and ending June 30, 2016.

e. A minimum of \$1,000 per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board that has submitted a written request to the program manager. The written request shall be made with the Request for Wireless E911 Fund form contained in the Wireless NG911 Implementation and Operations Plan. The request is due to the program manager on May 15, or the next business day, of each year.

The amount allocated under 10.9(3) "e" shall be 46 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

(1) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the E911 service area to the total square miles in the state.

(2) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.

(3) Funds allocated under 10.9(3) "e" shall be deposited in the E911 service fund and shall be used for communications equipment utilized by the public safety answering points for the implementation and maintenance of E911 services.

f. If moneys remain after all obligations under 10.9(3) "a" to "e," as listed above, have been fully paid, the remainder may be accumulated as a carryover operating surplus. The program manager, in consultation with the E911 communications council, shall allocate an amount, not to exceed \$100,000 per fiscal year, for development of public awareness and educational programs for personnel responsible for the maintenance, operation, and upgrading of local E911 systems, and for the expenses of members of the E911 communications council for travel, monthly meetings, and training. Payments from this allocation shall be made in accordance with department policy and procedures. These Remaining moneys shall be used to fund future network improvements and public safety answering point improvements related to the receipt and disposition of the 911 call. These moneys may also be used for wireless service providers' transport costs related to wireless E911 phase II services, if those costs are not otherwise recovered by the wireless service provider's customer billing or other sources and are approved by the program manager.

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

[Filed 11/4/15, effective 12/30/15]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2257C****INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapters 137C and 137D and sections 10A.104 and 137F.2, the Department of Inspections and Appeals hereby amends Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

These amendments make technical changes to Chapter 31 by updating references to the most current version of the Code of Federal Regulations (CFR) related to food processing plants, egg products processing plants, and pork products prepared at retail.

The rules are subject to waiver under the Department's general waiver provisions contained in 481—Chapter 6.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2171C**. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code chapters 10A and 137F.

These amendments shall become effective December 30, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule 31.1(19) as follows:

**31.1(19) *Trichinae control for pork products prepared at retail.*** Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, ~~2013~~ 2015, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of "certified pork" as authorized by the Iowa department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service, shall meet the requirements of this subrule.

ITEM 2. Amend subrule 31.2(9), introductory paragraph, as follows:

**31.2(9) *Adoption of Code of Federal Regulations.*** The following parts of the Code of Federal Regulations (April 1, ~~2014~~ 2015) are adopted:

ITEM 3. Amend subrule 31.2(10) as follows:

**31.2(10) *Egg products processing plants.*** The department shall generally use the good manufacturing practices adopted in paragraph 31.2(9) "b," unless such practices are inconsistent with standards set by the United States Department of Agriculture, Food Safety and Inspection Service, in 9 CFR Parts 590-592, January 1, ~~2013~~ 2015. If the standards are inconsistent, the standards adopted in 9 CFR Parts 590-592, January 1, ~~2013~~ 2015, apply.

[Filed 11/4/15, effective 12/30/15]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2260C****INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 522A.7 and 2015 Iowa Acts, Senate File 487, section 14, the Insurance Division (the Division) hereby amends Chapter 10, “Licensing of Insurance Producers,” Iowa Administrative Code.

These amendments implement and allow the Division to administer both Iowa Code chapter 522A, which regulates the limited licensing of rental companies when a motor vehicle rental company sells travel or automobile-related insurance products or coverage in connection with and incidental to the rental of vehicles, and 2015 Iowa Acts, Senate File 487, which regulates the sale of portable electronics insurance, including requirements for licensure and provisions for fees and penalties. The amendments to Chapter 10 provide administrative procedures and clarify current procedures for vehicle rental companies and their counter employees and for sellers of portable electronics insurance to apply for and hold limited licenses. The effective date of 2015 Iowa Acts, Senate File 487, is January 1, 2016.

Notice of Intended Action (the Notice) was published in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2174C**. Written comments were accepted through October 20, 2015, and a public hearing was held on October 20, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa. No comments were received.

The only change to the amendments published under Notice is the addition of Item 1 to amend the chapter title to better reflect the content of the chapter. Subsequent items have been renumbered accordingly.

The amendments are subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

These amendments will impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapter 522A and 2015 Iowa Acts, Senate File 487 [Iowa Code chapter 522E].

These amendments shall become effective January 1, 2016.

The following amendments are adopted.

ITEM 1. Amend **191—Chapter 10**, title, as follows:  
**LICENSING OF INSURANCE PRODUCERS PRODUCER LICENSES AND LIMITED LICENSES**

ITEM 2. Rescind the headings for **191—Chapter 10, Divisions I and II**.

ITEM 3. Rescind rule 191—10.51(522A) and adopt the following **new** rule in lieu thereof:

**191—10.51(522A,86GA,SF487) Limited licenses.**

**10.51(1) Limited licenses for vehicle rental companies and counter employees.**

*a. Purpose.* The purpose of this subrule is to govern the qualifications of and procedures for the licensing of vehicle rental companies and counter employees and to set out the requirements, procedures and fees relating to the qualification and licensure of vehicle rental companies and counter employees.

*b. Definitions.* For purposes of this subrule, the definitions of Iowa Code chapter 522A and the following definitions shall apply:

“*Division*” means the commissioner of insurance and the Iowa insurance division.

“*Division Web site*” means the Web site for the division, [www.iid.iowa.gov](http://www.iid.iowa.gov).

“*File*” means to submit information to the division. A submission is considered filed when it is received by the division.

“*Vehicle rental counter employee limited license*” means a license issued to an individual employed by a rental company authorized as a limited licensee as defined by Iowa Code section 522A.2.

“*Vehicle rental counter employee limited license application*” means the form used by an individual to apply for a counter employee license, pursuant to Iowa Code section 522A.3.

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“*Vehicle rental limited license*” means a license issued to a rental company authorized as a limited licensee as defined by Iowa Code section 522A.2.

“*Vehicle rental limited license application*” means the form used by a vehicle rental company to apply for a limited license, pursuant to Iowa Code section 522A.3.

*c. Requirement to hold a license.*

(1) A rental company that desires to offer or sell insurance set forth in Iowa Code section 522A.3 in connection with the rental of a vehicle shall file a vehicle rental limited license application with the division and, at the discretion of the division, receive a vehicle rental limited license.

(2) A counter employee who desires to offer or sell insurance products shall file a vehicle rental counter employee limited license application with the division and, at the discretion of the division, receive a vehicle rental counter employee limited license.

*d. Limited license application process for vehicle rental company.*

(1) To obtain a limited license, a vehicle rental company shall file a completed vehicle rental limited license application with the division and pay a fee of \$50 for a license. The vehicle rental limited license application form is available on the division Web site.

(2) If the vehicle rental limited license application is approved, the division shall issue a vehicle rental limited license. The vehicle rental limited license term shall be from the date of approval through the third December 31 after the vehicle rental limited license is issued.

*e. Limited license application process for counter employees.*

(1) An individual may not obtain a vehicle rental counter employee limited license unless that individual is employed by a vehicle rental limited licensee.

(2) To obtain a vehicle rental counter employee limited license, an individual shall successfully complete an examination and submit to the division a completed vehicle rental counter employee limited license application, pursuant to Iowa Code section 522A.3. The vehicle rental counter employee limited license application form is available on the division Web site.

(3) If the application is approved, the division shall issue a vehicle rental counter employee limited license. Vehicle rental counter employee limited license applications shall be deemed approved if not disapproved by the division within 30 days of receipt by the division. The vehicle rental counter employee limited license term shall be from the date of approval through the third December 31 after the license is issued.

(4) The vehicle rental counter employee limited license shall automatically terminate:

1. When the counter employee ceases employment with a vehicle rental limited licensee; or
2. At the end of the term of the vehicle rental counter employee limited license term if the license is not renewed pursuant to this subrule.

*f. Duties of vehicle rental limited licensees.*

(1) Pursuant to Iowa Code section 522A.3, a vehicle rental limited licensee is responsible for the training, examination and payment of license fees for all individuals it employs for whom the licensee desires to obtain vehicle rental counter employee limited licenses.

(2) A vehicle rental limited licensee shall obtain and administer an examination for all vehicle rental counter employee limited license candidates. The content of the examination and the manner of its administration must be approved by the division.

(3) The vehicle rental limited licensee must develop a system for the security of examination content.

(4) The vehicle rental limited licensee must administer the vehicle rental counter employee limited license examination under controlled conditions, approved by the division, which ensure that each candidate completes the examination without outside assistance or interference.

(5) The vehicle rental limited licensee must notify the division of the termination of employment of any of its vehicle rental counter employee limited licensees. The vehicle rental limited licensee shall file reports of terminations semiannually on January 1 and July 1.

*g. License renewal.*

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(1) All vehicle rental limited licenses and vehicle rental counter employee limited licenses shall be issued with an expiration date of the December 31 at the end of the license terms and must be renewed before the end of the license terms.

(2) Each year, the division shall mail to the vehicle rental limited licensee's latest electronic mail or mailing address appearing in the division's records a renewal form for use in renewing the vehicle rental limited license and all of the vehicle rental counter employee limited licenses that will expire that year.

(3) The vehicle rental limited licensee shall complete the renewal form for its license if applicable and for all of the vehicle rental counter employee limited licenses that will expire that year and shall return the completed renewal form and applicable fee to the division on or before December 31 of the renewal year or all licenses listed on the renewal form shall expire.

(4) The fee for renewal of a vehicle rental limited license is \$50, and the fee to renew each vehicle rental counter employee limited license is \$50.

*h. Limitation on fees.* A vehicle rental limited licensee shall not be required to pay license and renewal fees of more than \$1,000 in aggregate in any calendar year.

*i. Change in name or address.*

(1) Vehicle rental limited licensees shall file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any locations at which the vehicle rental limited licensee is doing business.

(2) Vehicle rental limited licensees shall file written notification with the division of changes in names or addresses of vehicle rental counter employee limited licensees. If the change of name is by a court order, a copy of the order shall be included with the notification. The limited licensee shall file reports of name and address changes semiannually on January 1 and July 1.

*j. Violations and penalties.*

(1) A rental company or counter employee who sells insurance in violation of this rule shall be deemed to be in violation of Iowa Code chapter 522A and subject to the penalties provided in Iowa Code section 522A.3.

(2) A vehicle rental limited licensee or vehicle rental counter employee limited licensee who commits an unfair or deceptive trade practice in violation of Iowa Code chapter 507B, or in violation of administrative rules which implement that chapter, is subject to the penalties provided for in Iowa Code chapter 507B.

**10.51(2) Limited licenses for persons who sell portable electronics insurance.**

*a. Purpose.* The purpose of this subrule is to govern the qualifications of and procedures for the licensing of persons offering or selling any form of portable electronics insurance in this state, pursuant to 2015 Iowa Acts, Senate File 487.

*b. Definitions.* For purposes of this subrule, the definitions of 2015 Iowa Acts, Senate File 487, and the following definitions shall apply:

"Division" means the commissioner of insurance and the Iowa insurance division.

"Division Web site" means the Web site for the division, [www.iid.iowa.gov](http://www.iid.iowa.gov).

"File" means to submit information to the division. A submission is considered filed when it is received by the division.

"Portable electronics insurance limited license" means a portable electronics insurance license as defined by 2015 Iowa Acts, Senate File 487, section 1.

"Portable electronics insurance limited license application" means the form used by a portable electronics vendor to apply for a portable electronics insurance limited license.

*c. Requirement to hold a portable electronics insurance limited license.* A person that desires to offer or sell any form of portable electronics insurance in this state shall:

(1) Be licensed as an insurance producer pursuant to Iowa Code chapter 522B;

(2) Submit an application to the division and, at the discretion of the division, receive a portable electronics insurance limited license pursuant to 2015 Iowa Acts, Senate File 487, sections 2, 3 and 4, and this subrule; or

(3) Be an endorsee in compliance with 2015 Iowa Acts, Senate File 487, sections 6 and 7, and this subrule.

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*d. Application process for portable electronics insurance limited license.*

(1) To obtain a portable electronics insurance limited license, a portable electronics vendor shall submit to the division a completed portable electronics insurance limited license application and the appropriate fee, as required by 2015 Iowa Acts, Senate File 487, section 3.

(2) If the application is approved, the division shall issue a portable electronics insurance limited license. The portable electronics insurance limited license term shall be from the date of approval through the third December 31 after the portable electronics insurance limited license was issued.

*e. Portable electronics insurance limited license renewal.*

(1) All portable electronics insurance limited licenses shall be issued for a license period as defined in 2015 Iowa Acts, Senate File 487, section 1, and must be renewed triennially.

(2) Not less than 60 days before the end of the license period, the division shall mail a renewal form to the portable electronics insurance limited licensee at the last-known electronic mail or mailing address appearing in the division's records.

(3) The portable electronics insurance limited licensee shall complete and return to the division the completed renewal form and the applicable fee, as required by 2015 Iowa Acts, Senate File 487, section 5, on or before the expiration date of the portable electronics insurance limited license, or the licensee's portable electronics insurance limited license shall expire and the authority of all endorsees to sell under the portable electronics insurance limited license also shall expire.

*f. Change in name or address.* A portable electronics insurance limited licensee shall file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any location at which the portable electronics insurance limited licensee is doing business.

*g. Violations and penalties.* A portable electronics vendor or endorsee that sells insurance in violation of this rule shall be deemed to be in violation of 2015 Iowa Acts, Senate File 487, and subject to the penalties in 2015 Iowa Acts, Senate File 487, section 8.

This rule is intended to implement Iowa Code chapter 522A and 2015 Iowa Acts, Senate File 487.

ITEM 4. Rescind and reserve rules **191—10.52(522A)** to **191—10.60(522A)**.

ITEM 5. Rescind the following implementation sentence for **191—Chapter 10, Division II:**

~~Rules 191—10.51(522A) to 191—10.60(522A) are intended to implement Iowa Code Supplement chapter 522A.~~

[Filed 11/4/15, effective 1/1/16]

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**ARC 2258C**

**INSURANCE DIVISION[191]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 523A.809 and 2015 Iowa Acts, House File 632, the Insurance Division hereby amends Chapter 15, "Unfair Trade Practices"; rescinds Chapter 100, "General Provisions," and adopts new Chapter 100, "Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services"; and rescinds Chapter 101, "Trust Deposits and Trust Funds," Chapter 102, "Warehoused Merchandise," Chapter 103, "Licensing of Preneed Sellers and Sales Agents," Chapter 104, "Continuing Education for Sales Agents," and Chapter 105, "Standards of Conduct, Prohibited Practices, and Disciplinary Procedures," Iowa Administrative Code.

Iowa Code chapter 523A, among other things, prescribes the terms and conditions under which entities and individuals can be licensed to provide preneed sales of cemetery merchandise, funeral merchandise or funeral services. It also describes how payments for the preneed merchandise and services are to be held in trust, or performance is to be secured with an insurance policy or another approved alternative,

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and other duties and responsibilities of the entities and individuals involved. The amendments and new Chapter 100 incorporate many of the requirements of existing Chapter 15 and Chapters 100 through 105 and take into account the amendments made to Iowa Code chapter 523A by 2015 Iowa Acts, House File 632, which took effect July 1, 2015.

Notice of Intended Action (the Notice) was published in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2173C**. Written comments were accepted through October 21, 2015, and a public hearing was held on October 21, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa. Some comments were received. The following list summarizes the comments received and the changes made in response to public comment and Division review.

1. A comment was received suggesting that the proposed effective date of December 30, 2015, did not give preneed sellers much time to prepare for the changes. However, the Division has not changed the effective date stated in the Notice, because 2015 Iowa Acts, House File 632, became effective July 1, 2015, and because the comment was related mostly to the contract numbering requirement of paragraph 100.31(1)“c”; preneed sellers can either ask for written permission from the commissioner to use a different system pursuant to subparagraph 100.33(1)“c”(4) or ask for waiver from the rule’s requirements pursuant to 191—4.21(17A) through 191—4.36(17A).

2. A comment was received suggesting that programs or courses which are offered or sponsored by a state or national funeral association should be acceptable for continuing education credit. The suggested course topic has been added as numbered paragraph 100.14(4)“d”(1)“8.”

3. A comment was received requesting clarification of the language in subrule 100.20(1) regarding withdrawal amounts of trust interest or income, and the proposed language has been clarified.

4. A comment was received suggesting additional language be added to subrule 100.23(7) regarding the effect of failure by the preneed seller to find a replacement bond. The Division has not changed the proposed language but will meet with the commenter.

5. Following Division review, language in subrules 100.25(4) to 100.25(6) has been changed as follows:

- Terminology has been corrected in paragraphs 100.25(4)“b,” “d” and “e.”
- Paragraphs 100.25(5)“b” and 100.25(6)“b” have been restructured as paragraph 100.25(5)“b.”
- Paragraph 100.25(6)“a” has not been adopted.
- The remainder of subrule 100.25(6) has been incorporated into subrule 100.25(5) and the language has been modified.

6. A comment regarding paragraph 100.31(2)“a” was received noting that cancellation of an existing insurance policy is sometimes required in order to enter into a purchase agreement. The Division has not changed the proposed paragraph because the language regarding the “best interests of the purchaser” covers instances such as this.

7. A comment was received requesting a change in paragraph 100.31(2)“e” to require that the act or practice prohibited must result in a civil judgment under Iowa Code chapter 235F before the Division concludes that a violation of the rule by a preneed seller or sales agent has occurred. The Division has determined that such a civil finding is unnecessary to prove unethical, harmful or detrimental sales practices. The proposed paragraph has not been changed, but the Division will meet with the commenter.

8. Comments were received expressing concern about paragraphs 100.31(3)“a” and “c.” In response, the Division has not adopted the proposed paragraphs pending additional discussion with interested parties; instead, the paragraphs have been reserved. Once satisfactory versions are developed, the paragraphs will be proposed in a later rule making.

9. A question was asked at the public hearing about whether the disclosures required by paragraph 100.31(3)“b” should be in writing. Since that is the intent, the proposed paragraph has been clarified.

10. A question was asked at the public hearing about whether the amount of the commission to be paid must be disclosed pursuant to subparagraph 100.31(3)“b”(7). The Division has added language to clarify that the amount of a commission is not required to be disclosed, only the fact that a commission will be paid.

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11. In response to a question asked at the public hearing related to the types of funding provided in paragraphs 100.31(3)“d” and “e,” changes have been made to clarify that the requirements of the paragraphs apply regardless of the type of funding for the purchase agreement.

12. In response to public comment, language has been added to subparagraph 100.31(3)“d”(1) to allow sales agents to provide to potential purchasers in lieu of the Division’s Guide to Prearranged Funeral Plans documents substantially similar to the Guide.

13. In response to a question asked at the public hearing, the word “signed” has been deleted from the requirement in subparagraph 100.31(3)“d”(3) that the cost estimate maintained in the preneed seller’s records be signed.

14. Based on comments received, paragraph 100.31(3)“e” has been clarified to explain what a preneed seller is required to disclose related to a purchase agreement that describes the purchase price as “guaranteed.”

15. Based upon Division review, a correction has been made to paragraph 100.33(1)“a” providing that the records should be kept by preneed sellers for five years after the date of the death of the beneficiary, not of the purchaser.

16. Comments were received stating that the confidentiality requirements of paragraph 100.33(1)“b” were broader than necessary. The Division has revised the paragraph to require confidentiality only of social security numbers.

17. Comments were received about the numbering requirements of paragraph 100.33(1)“c” because many preneed sellers already have numbering systems in place. No changes have been made to the proposed language. A preneed seller may either ask for written permission from the Commissioner to use a different system pursuant to subparagraph 100.33(1)“c”(4) or ask for waiver from the rule’s requirements pursuant to rules 191—4.21(17A) through 191—4.36(17A).

18. Upon review, the Division has combined proposed paragraphs 100.33(1)“c”(4)“3” and “4” to clarify that more than one suffix may be used if necessary. As a result, paragraph 100.33(1)“c”(4)“5” is renumbered as paragraph “4.”

19. Upon Division review, language has been added to the introductory paragraph of proposed subrule 100.35(1), to proposed paragraphs 100.35(1)“a,” “b” and “e,” and to proposed paragraph 100.35(3)“a” to make them consistent with each other.

20. Upon Division review, a new paragraph has been added after subrule 100.35(4) to clarify that any change of controlling interest constitutes the sale of a business for purposes of rule 191—100.35(523A).

In addition, clarifying and grammatical changes have been made in subrules 100.13(1) and 100.15(4). The Insurance Division’s waiver provisions in 191—Chapter 4 apply to this rule making.

These amendments will impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632.

These amendments shall become effective December 30, 2015.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **191—15.6(507B)**.

ITEM 2. Amend the heading before **191—Chapter 100** as follows:

REGULATED INDUSTRIES  
~~SALES OF CEMETERY MERCHANDISE, FUNERAL MERCHANDISE AND FUNERAL SERVICES~~

ITEM 3. Rescind 191—Chapter 100 and adopt the following **new** chapter in lieu thereof:

CHAPTER 100  
SALES OF CEMETERY MERCHANDISE, FUNERAL MERCHANDISE  
AND FUNERAL SERVICES

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**191—100.1(523A) Purpose.** This chapter is promulgated to implement and administer Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632, which regulates the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items.

**191—100.2(523A) Definitions.** The definitions in Iowa Code chapter 523A are incorporated by this reference. In addition, the following definitions shall apply to this chapter:

“*Active license*” means a license that is in effect and in good standing.

“*Commissioner*” means the Iowa insurance commissioner or staff of the Iowa insurance division as designated by the commissioner.

“*Commissioner’s Web site*” means the Web site of the Iowa insurance division, [www.iid.iowa.gov](http://www.iid.iowa.gov).

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensed person’s knowledge and to maintain and improve the safety and welfare of the public.

“*Credit*” means at least 50 minutes spent by a licensed person in actual attendance at and in completion of an approved continuing education activity.

“*Insurance*” means life insurance policies and annuity contracts, except where the context indicates otherwise.

“*License*” means an authorization to act issued by the commissioner, authorizing a person to act as preneed seller or a sales agent.

“*Licensed person*” means any person who holds a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who holds an active or restricted license.

“*Merchandise or services*” means cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, as defined in Iowa Code section 523A.102, unless the context clearly indicates otherwise.

“*Person*” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; cooperative; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

“*Purchase agreement*” means an agreement to furnish merchandise or services when performance or delivery may be more than 120 days following the initial payment on the account.

“*Restricted license*” means an active license that has been placed on restricted status by the commissioner.

“*Sales log*” means a record of each sale of a purchase agreement.

**191—100.3(523A) Contact and correspondence.**

**100.3(1) Contact information.** All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, 601 Locust, Two Ruan Center, Fourth Floor, Des Moines, Iowa 50309-3738. Telephone inquiries may be made at (877)955-1212. Electronic submissions and correspondence may be made through the commissioner’s Web site.

**100.3(2) Complaints, inquiries and correspondence.** The commissioner may receive and process any complaint made regarding merchandise or services, or regarding a sales agent or a preneed seller, that alleges certain acts or practices which may constitute one or more violations of the provisions of this chapter. Where appropriate, the commissioner may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the commissioner. If required by the commissioner, complaints shall be made on forms prescribed by the commissioner.

**100.3(3) Forms and instructions.** Copies of all required forms and instructions are available on the commissioner’s Web site.

**191—100.4 to 100.9** Reserved.

**191—100.10(523A) License status.** Preneed seller licenses and sales agent licenses have the following three statuses:

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**100.10(1) *No license.*** A person has no current preneed seller or sales agent active or restricted license issued by the commissioner.

**100.10(2) *Active license.*** A person has had a license issued by the commissioner, it is current in renewals, and it is otherwise in good standing.

**100.10(3) *Restricted license.*** A person has had an active license issued by the commissioner, the license is current in renewals, but the active license has been placed on restricted status by the commissioner.

*a.* The commissioner may place a license in restricted status for various reasons including, but not limited to, the following:

- (1) Disciplinary action.
- (2) Failure to pay state debt, child support or student loan.
- (3) Nondisciplinary reason if requested by the person.
- (4) Cessation of business.

*b.* A person whose license is restricted shall not enter into purchase agreements or sell merchandise or services, but may perform administrative duties related to sales made before the license was placed on restricted status.

*c.* A person whose license is restricted and who wishes to maintain a restricted status license shall meet the requirements for license renewal in rule 191—100.15(523A) by the required date. If the restricted license is not renewed, the license shall lapse at the end of its term.

**191—100.11(523A) *Application for license.*** To obtain a preneed seller license as required by Iowa Code section 523A.501 or a sales agent license as required by Iowa Code section 523A.502, a person must submit an application to the commissioner pursuant to this rule. A person shall not accept any payment or funding, including the assignment of ownership of or proceeds from insurance, related to the purchase of merchandise or services in Iowa, if the sale of the merchandise or services is subject to Iowa Code chapter 523A, unless the person holds an active license. Application forms and instructions may be obtained from the commissioner's Web site.

**100.11(1) *Preneed seller application.*** A person that desires to be licensed as a preneed seller must submit all of the following:

- a.* A completed application form.
- b.* A signed waiver and the required fee allowing the commissioner to request and obtain, pursuant to Iowa Code section 523A.501, criminal history data information for each owner and director of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, shareholder with 10 percent or more of the stock, or other person with a financial interest in the preneed seller, who has the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner.

*c.* A financial history, if requested by the commissioner, for each owner and director of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock.

*d.* Evidence of a fidelity bond or insurance or a statement that demonstrates compliance with Iowa Code section 523A.201.

*e.* Payment of the appropriate license fee.

**100.11(2) *Sales agent application.*** An individual who desires to be licensed as a sales agent must satisfy the following requirements:

- a.* Be at least 18 years of age.
- b.* Submit a completed application form.
- c.* Submit a signed waiver and the required fee allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code section 523A.501.
- d.* Pay the appropriate license fee.

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**191—100.12(523A) Processing of application for a license.**

**100.12(1) *Information to be reviewed for evaluation of application for a license.*** In order to determine whether to approve or deny an application for a license, the commissioner shall review all information that is submitted with the application, obtained through criminal history investigation pursuant to Iowa Code sections 523A.501(3) and 523A.502(4), and submitted pursuant to a commissioner's request.

*a.* The commissioner may require any documents reasonably necessary to verify the information contained in the application or to verify that the individual making application has the character and competency required to receive a license. The commissioner also may request fingerprints and reimbursement of costs for investigating a criminal history, pursuant to Iowa Code sections 523A.501(3) and 523A.502(4).

*b.* The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code sections 523A.501(3) and 523A.502(4). For purposes of preneed sellers' licenses, pursuant to Iowa Code section 523A.501(3), the commissioner's investigation of criminal history data and financial history shall be limited to persons who have the ability to control or to direct the control of trust funds under Iowa Code chapter 523A, as determined by the commissioner. The commissioner may deny the application for a license based on an applicant's conviction in any jurisdiction for a criminal offense involving dishonesty or a false statement.

**100.12(2) *Incomplete application.*** If the application form is not completed according to the instructions, or if all of the information in the instructions or requested by the commissioner is not provided, the commissioner shall reject the application and send a notice to the applicant identifying the problems with the license application and listing any corrective action necessary before the resubmission of an application.

**191—100.13(523A) Approval and denial of license applications; issuance of license.**

**100.13(1) *Approval of license application.*** If the commissioner approves a license application, the commissioner shall issue a license, the term of which shall begin the day the license is issued and end April 15.

**100.13(2) *License denial.*** The commissioner may deny a license application based on information received during the application process, on any ground listed in Iowa Code section 523A.503 or rules 191—100.16(523A) and 191—100.40(523A).

*a. Notice of denial.* When the commissioner denies an application for a preneed seller or sales agent license, the commissioner shall send a denial letter to the applicant by certified mail, return receipt requested, or in the manner of service of an original notice. The denial letter shall serve as notice of the denial and shall explain why the commissioner denied the application.

*b. Appeal.* An applicant that desires to contest the denial of an application may request a contested case proceeding pursuant to 191—Chapter 3 within 30 calendar days of the date the notice of denial is mailed. A failure to timely request a hearing constitutes failure to exhaust administrative remedies. License denial hearings under this chapter shall be conducted pursuant to 191—Chapter 3. License denial hearings and all documents related thereto are contested cases open to the public pursuant to Iowa Code chapters 17A and 22. While each party shall have the burden of establishing the matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

**191—100.14(523A) Continuing education requirements.** For each license term, each licensed sales agent shall complete a minimum of three credits of continuing education in courses acceptable to the commissioner, which may include independent study courses, pursuant to paragraph 100.14(2)“g.” Completion of the required continuing education is mandatory for the renewal of a sales agent license. “Independent study” means a subject, program or activity that a person pursues autonomously that meets the requirements of this rule and that includes a test at the conclusion of the independent study. Independent study includes but is not limited to programs conducted using television, the Internet, video, sound-recorded programs, correspondence work, and other similar media.

**100.14(1) *Exemption.*** The requirements of this rule do not apply to:

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- a. A licensed funeral director.
- b. A licensed insurance producer.
- c. A licensed sales agent who served full time in the U.S. armed forces on active duty during a substantial part of the continuing education term and who submits evidence of such service.

**100.14(2) General rules for continuing education credits.**

- a. The topic of at least one of the three continuing education credits earned each license term must be business ethics.
- b. Proof of completion of a continuing education course shall, at a minimum, include all of the following, in a format acceptable to the commissioner:
  - (1) The date of the course, the location of the course, the course title, the course subject, and the identity and qualifications of the presenters.
  - (2) The number of course credits.
  - (3) Proof of successful completion of the course provided by the person conducting or sponsoring the course.
- c. A sales agent cannot receive continuing education credit for courses taken prior to the issuance of an initial license.
- d. A sales agent cannot receive continuing education credit for the same course twice in one license term.
- e. A sales agent cannot carry over to the next license term more than three continuing education credits earned in excess of the sales agent's license term requirements.
- f. An instructor of a course is entitled to the same credit as a student completing that course; the instructor may receive such credit once during a license term, regardless of how many times the instructor teaches the class.
- g. A sales agent may receive continuing education credit for independent study courses that are part of a recognized national designation program. A sales agent may receive up to three continuing education credits for independent study courses during a license term. A sales agent shall maintain a record from the course provider that the course was completed and the examination was passed.

**100.14(3) Maintenance of records of completion of continuing education requirements.** A sales agent shall maintain for three years after the license term during which the course was taken the original proof of completion and descriptions and outlines of all completed continuing education courses.

**100.14(4) Standards for acceptable continuing education courses.** The commissioner shall find a continuing education course acceptable if it meets all of the following criteria:

- a. The course constitutes an organized program of learning which contributes directly to the professional competency of the licensee.
- b. The course is conducted by individuals who have specialized training concerning the subject matter of the course.
- c. The person conducting or sponsoring the course provides proof of attendance to attendees.
- d. The activity pertains to subject matters which integrally relate to the sale of merchandise or services and purchase agreements subject to Iowa Code chapter 523A.
  - (1) The following are examples of acceptable course topics:
    1. Ethics.
    2. Mortuary science law; public health; and technical standards, requirements and issues regarding the handling and interment of deceased human remains.
    3. Insurance.
    4. Iowa laws and administrative rules related to Iowa Code chapters 523A and 523I.
    5. Technical information related to merchandise or services used in the death care industry.
    6. Medicaid and the Iowa estate recovery law, Iowa Code section 249A.5(2) and 441—subrule 76.12(7).
    7. Relevant federal laws and regulations such as the Federal Trade Commission Funeral rule (16 CFR Part 453).
    8. Information provided in programs or courses offered or sponsored by a state or national funeral association that otherwise meets the criteria in this subrule.

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- (2) The following are examples of course topics that are not acceptable for continuing education credit:
1. Sales.
  2. Motivation.
  3. Purchaser prospecting.
  4. Supportive office skills (e.g., typing, filing, computer systems).
  5. Other subjects not specifically related to the death care industry.

**191—100.15(523A) License renewal.**

**100.15(1) Procedure for renewal.** The commissioner shall renew preneed sellers' licenses, pursuant to Iowa Code section 523A.501(7) as amended by 2015 Iowa Acts, House File 632, section 38, or sales agents' licenses, pursuant to Iowa Code section 523A.502(5) as amended by 2015 Iowa Acts, House File 632, section 39, for both active and restricted status licenses, if the preneed sellers or sales agents provide to the commissioner all of the following, which must be received by the commissioner on or before April 15 of each year:

*a. Annual report.* A preneed seller or sales agent shall file a complete and accurate annual report in the form and manner directed by the commissioner. The form and instructions may be obtained through the commissioner's Web site.

*b. Verification of completion of continuing education.* A sales agent shall have completed the continuing education required by rule 191—100.14(523A) and shall attest to completion of the continuing education and compliance with all instructions on the commissioner's Web site.

*c. Renewal fee.* A preneed seller or sales agent shall submit a renewal fee as set out in rule 191—100.18(523A). Failure to include the proper amount shall be cause for the renewal to be rejected.

**100.15(2) Renewal of a restricted license.** A preneed seller or sales agent whose license is in restricted status and who seeks to continue to conduct actions administering purchase agreements created before the license is placed in restricted status must comply with the renewal process of this rule.

**100.15(3) Lapse of license.** If one of the items required by subrule 100.15(1) is not provided by April 15 of each year or is incomplete or if no application for renewal is received, the preneed seller or sales agent license shall lapse. The commissioner shall notify the preneed seller or sales agent of the reason for the lapse.

**100.15(4) Commissioner's option not to permit renewal.** The commissioner may choose not to renew a license for any of the reasons listed in Iowa Code section 523A.503 or rules 191—100.16(523A) and 191—100.40(523A).

**191—100.16(523A) Prohibited activities related to licensing.**

**100.16(1) Fraudulent or deceptive acts in procuring a license.** An individual shall not engage in fraudulent or deceptive acts in procuring a preneed seller or sales agent license. Prohibited acts include but are not limited to the following:

- a.* False representations of a material fact, whether by conduct or by false or misleading statements.
- b.* Concealing or omitting anything that should have been disclosed or included with the application.
- c.* Filing a false identification.
- d.* Filing an untrue certification or affidavit.
- e.* Falsifying documents.

**100.16(2) Prohibited activities by persons without a preneed seller or sales agent license.**

*a.* A person to whom a license has not been issued by the commissioner, or a person whose license has expired or is restricted, shall not conduct any of the activities for which an active license is required pursuant to Iowa Code chapter 523A or this chapter, including the following:

- (1) Post or display the person's license;
- (2) Use a license certificate or a license number, except in communications with the commissioner;

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(3) Agree to provide any merchandise or services subject to Iowa Code chapter 523A after the date the license expired or became restricted, unless the merchandise or services are provided pursuant to an existing purchase agreement.

*b.* This subrule does not prohibit payments to an unlicensed person upon the person's delivery of merchandise or services after the death of a beneficiary, including the payment of the proceeds of insurance at the time of death of the insured.

**191—100.17(523A) Reinstatement of a restricted license.**

**100.17(1) Definition.** The term "reinstatement" as used in this rule means changing the status of a license from restricted to active.

**100.17(2) Application for reinstatement.** Any preneed seller or sales agent whose license is restricted may request reinstatement by filing an application for reinstatement with the commissioner. Instructions can be found on the commissioner's Web site. If the licensed person meets all conditions of licensure, the commissioner shall reinstate the license.

**100.17(3) Reinstatement after disciplinary action.** If the restricted status of the license was the result of a disciplinary action, or was a forfeiture by the preneed seller or sales agent in connection with a disciplinary action, reinstatement must be in accordance with the terms of the applicable order or consent agreement. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis for placing the license in restricted status no longer exists. Before determining whether to grant reinstatement, the commissioner may review a financial history report for the time period during which the license was restricted.

**100.17(4) Reinstatement after preneed seller's change of ownership or cessation of business operations.** If the restricted status of a preneed seller's license was the result of the preneed seller's change of ownership or cessation of business operations under rule 191—100.35(523A), an application for reinstatement shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis for placing the license in restricted status no longer exists. Before determining whether to grant reinstatement, the commissioner may review a financial history report for the time period during which the license was restricted.

**100.17(5) Reinstatement after failure to pay child support.** If the restricted status of the license was the result of a suspension for failure to pay child support pursuant to paragraph 100.40(2) "j," the application for reinstatement shall include proof from the Iowa child support recovery unit that the outstanding child support has been paid.

**100.17(6) Reinstatement after failure to pay student loan debt.** If the restricted status of the license was the result of a suspension for failure to pay student loan debt pursuant to paragraph 100.40(2) "k," the application for reinstatement shall include proof from the Iowa college student aid commission that the outstanding student loan debt has been paid.

**100.17(7) Reinstatement after failure to pay state debt.** If the restricted status of the license was the result of a suspension for failure to pay state debt pursuant to paragraph 100.40(2) "l," the application for reinstatement shall include proof from the centralized collection unit of the department of revenue that the outstanding state debt has been paid.

**191—100.18(523A) Payment of fees.**

**100.18(1) Manner of payment.** Fees shall be paid by electronic payment as permitted by the commissioner.

**100.18(2) Nonrefundable.** Fees are not refundable.

**100.18(3) Specific fees.** Fees are set by Iowa Code chapter 523A and by this chapter.

*a.* The license fee for a preneed seller applicant is \$25, plus \$15 for each criminal history request made on each individual for whom a criminal history is required by Iowa Code section 523A.501(3).

*b.* The license fee for a sales agent applicant is \$10, plus \$15 for each criminal history background check.

*c.* The fee for a license renewal is \$15 for a preneed seller and \$10 for a sales agent.

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**191—100.19** Reserved.

**191—100.20(523A) Trust interest or income.** A preneed seller may withdraw interest or income, as defined by Iowa Code section 523A.102(16), from trusts holding funds which are established pursuant to Iowa Code section 523A.201(8) and which are related to purchase agreements executed on or after July 1, 1987, in accordance with this rule.

**100.20(1)** *Amount of trust interest or income which may be withdrawn.* Trust interest and income must remain in trust and cannot be withdrawn by a preneed seller, except that a preneed seller may withdraw from a purchase agreement trust fund any interest and income credited to the trust during the preceding calendar year in excess of the sum of the following amounts, which sum must be retained in trust:

*a.* Fifty percent of the total interest and income credited to the trust during the preceding calendar year, and

*b.* An additional amount necessary to adjust the trust funds for inflation, as set by the commissioner based on the consumer price index pursuant to rule 191—100.22(523A).

**100.20(2)** *Allocation of trust interest or income to purchasers' accounts.* Interest and income not withdrawn from a purchase agreement trust fund shall be allocated pro rata to the purchase agreement accounts remaining in the trust at the end of the month in which the withdrawal was made.

**100.20(3)** *Credit for trust interest or income withdrawn.* The early withdrawal of interest or income under this rule does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation of the purchase agreement, or nonperformance by the preneed seller.

**100.20(4)** *Time period during which trust interest or income may be withdrawn.* Interest or income withdrawals permitted by this rule shall be made up to 180 days after the calendar year in which the interest or income was earned.

**100.20(5)** *Application of contract law.* A purchase agreement may limit or prohibit a preneed seller's ability to withdraw income or interest. However, in the event of a conflict with the limitations set forth in this rule, the preneed seller must comply with the requirements of this rule.

**191—100.21(523A) Cancellation refunds.** The requirement set forth in Iowa Code section 523A.602(2) "b"(1) applies to any purchase agreement executed on or after July 1, 2001.

**191—100.22(523A) Consumer price index adjustment.** The inflation factor adjustment to be used for Iowa Code sections 523A.201(8) and 523A.602(2) "b"(1), for years 1987 and later, shall be the consumer price index for all urban consumers (CPI-U) issued by the U.S. Department of Labor's Bureau of Labor Statistics.

**191—100.23(523A) Preneed seller's use of surety bond in lieu of trust.**

**100.23(1)** In lieu of the trust requirements of Iowa Code section 523A.405 as amended by 2015 Iowa Acts, House File 632, section 36, a preneed seller may file with the commissioner a surety bond. The surety bond shall be in the form as directed by the commissioner and as available on the commissioner's Web site.

**100.23(2)** A surety bond claimant, for purposes of this rule, includes any purchaser whose purchase agreement predates the effective date of the surety bond or was executed during the surety bond's period of coverage and whose purchase agreement has not been rescinded, fulfilled, or secured by another bond, by other insurance, or by trust funds.

**100.23(3)** Except as provided in subrule 100.23(6), no suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

**100.23(4)** Any surety bond claimant as set forth in subrule 100.23(2) may maintain an action on the surety bond. A surety's aggregate liability shall not exceed the penal sum of the bond.

**100.23(5)** A surety shall not cancel a surety bond except upon written notice of cancellation given by the surety to the commissioner by certified mail. The effective date of the cancellation shall not be

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less than 60 days after the commissioner receives the surety's notice. The surety shall specify the reason for the cancellation.

**100.23(6)** The surety shall not be liable for any surety bond claim related to the preneed seller's insolvency or cessation of business unless the surety claim is made within five years of the date of insolvency or business cessation.

**100.23(7)** If the surety notifies the preneed seller that the surety intends to cancel a surety bond, the preneed seller, within 30 days, shall:

- a. Submit to the commissioner a substitute surety bond complying with this rule; or
- b. Deposit funds in an amount as required by Iowa Code chapter 523A to a trust account established by the preneed seller.

**100.23(8)** A preneed seller shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy. The surety bond amount shall be calculated based on the value of the purchase agreements sold and not performed or canceled and for which no trust fund or insurance is in place.

**191—100.24** Reserved.

**191—100.25(523A) Funeral and cemetery merchandise warehoused by preneed sellers.**

**100.25(1) *Applicability.*** This rule applies only to storage existing on or before July 1, 2007, under purchase agreements executed between July 1, 1987, and July 1, 2007.

**100.25(2) *Warehousing not permitted.*** After July 1, 2007, warehousing shall not be used as an alternative to the trust requirements of Iowa Code chapter 523A.

**100.25(3) *Approval of storage facilities by commissioner.*** Notwithstanding subrule 100.25(2), if a preneed seller receives approval in writing from the commissioner pursuant to subrule 100.25(4), the trust requirements of Iowa Code sections 523A.201 and 523A.202 do not apply to either:

- a. Payments for outer burial containers made of either polystyrene or polypropylene; or
- b. Cemetery merchandise delivered to the purchaser or stored in a storage facility not owned or controlled by the preneed seller.

**100.25(4) *Storage facility application.*** The commissioner shall approve a preneed seller's application to have a storage facility designated as an approved storage facility for purposes of subrule 100.25(3) if the following conditions are met:

a. *Insurance coverage and financial condition.* The storage facility shall demonstrate that adequate insurance against loss and damage has been purchased and that the storage facility's financial condition is commensurate with any financial obligations assumed. Proof of the storage facility's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include the following:

- (1) A balance sheet prepared as of a date within 120 days prior to the application; and
- (2) A profit and loss statement and any changes in financial position for each of the three fiscal years preceding the date of the balance sheet or, if the storage facility has been in existence less than three years, for the period of the storage facility's existence.

b. *Records system and maintenance.* The storage facility must demonstrate that it has a system that adequately records:

- (1) For each item in storage: an identification and a description; the ownership; name and address of the preneed seller; an order number; the order date; and the storage date.

- (2) An aggregate listing and numerical totals for the entire storage facility and for each state or province.

c. *Title, delivery, identification, payments.* The storage facility shall agree to comply with subrule 100.25(5).

d. *Storage requirements.* The storage facility shall provide storage that adequately provides both accessibility and protection against damage.

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*e. Consent to audits and inspections.* The storage facility shall provide written consent to authorize audits, reviews and inspections by the commissioner pursuant to paragraph 100.25(5) “e” and written consent to provide reports requested pursuant to paragraph 100.25(5) “g.”

*f. Compliance with law.* The storage facility shall be in compliance with all applicable laws regulating the applicant’s activities as a warehouse keeper, manufacturer, supplier, or preneed seller of cemetery or funeral merchandise.

**100.25(5) Storage facility duties.**

*a. Title.* The storage facility shall provide to the preneed seller a minimum of two copies of a title certificate. The title certificate should not be issued until the merchandise is stored in substantially complete condition. Each preneed seller shall deliver at least one copy of the title certificate to the purchaser and shall retain one copy in the preneed seller’s records.

*b. Delivery requirements.* The storage facility shall not accept prepayment of delivery expenses or charges. The storage facility shall provide written disclosure to the preneed seller that delivery costs will be billed at the time of delivery. The storage facility shall require the purchaser’s signature, or the signature of the purchaser’s legal representative, prior to the delivery of the cemetery or funeral merchandise.

*c. Storage requirements.* The storage facility shall adequately provide accessibility to the stored merchandise and adequately protect the stored merchandise against damage.

*d. Identification of merchandise.* The storage facility shall allow for visual inspection and counting; have storage by type or style; identify the location of the item by a shelf and bin- or slot-type system or reasonable alternative; and keep totals for each type of merchandise item in storage.

*e. Audits and examinations.* The storage facility shall allow the commissioner to examine the books, papers, records, memoranda or other documents of the storage facility and stored merchandise for the purpose of verifying compliance with Iowa Code chapter 523A and this rule. Unless waived by the commissioner in writing, the transportation, meal and lodging expenses of the auditors and examiners shall be reimbursed by the storage facility.

*f. Identification of merchandise.* All cemetery merchandise must be appropriately marked, identified and described in a manner to distinguish it from other similar items of merchandise, unless the commissioner has given to the seller prior written waiver of this requirement upon a showing of good cause.

*g. Reports.* The commissioner may request reports containing information about the storage facility, including but not limited to the following:

(1) A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and location of all storage facilities;

(2) A description of the storage program; and

(3) A detailed description of all merchandise currently in storage, which shall include all of the following:

1. The date the merchandise was first placed in storage;

2. The full name of the purchaser or the person on whose behalf the merchandise was purchased;

3. The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item;

4. The name and address of the preneed seller;

5. The total number of items, by category, in storage at the facility for preneed sellers located in this state; and

6. The total number of items, by category, in storage at the facility.

**191—100.26 to 100.29** Reserved.

**191—100.30(523A) Standards of conduct for preneed sellers and sales agents.** Rules 191—100.30(523A) through 191—100.36(523A) are intended to establish certain minimum standards and guidelines of conduct for preneed sellers and sales agents by identifying required actions or

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practices. Failure to comply with these rules may be grounds for action under Iowa Code chapter 523A or rule 191—100.40(523A) or 191—100.41(523A).

**191—100.31(523A) Advertisements, sales practices and disclosures.****100.31(1) Advertising.**

*a.* A preneed seller or sales agent shall not engage in any act or practice that violates Iowa Code section 523A.702 or 523A.703, whether or not actual harm or injury occurs, including but not limited to making untrue or improbable statements in advertisements.

*b.* An advertisement for the solicitation or sale of a purchase agreement which is to be funded by insurance shall adequately disclose the following:

- (1) The fact that insurance is to be involved or used to fund a purchase agreement, and
- (2) The nature of the relationship among the sales agent, the preneed seller, the provider of merchandise or services, and any other person.

**100.31(2) Unethical, harmful or detrimental sales practices.** A preneed seller or sales agent shall not engage in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated by Iowa Code chapter 523A, or materially related to such activity, including but not limited to:

*a.* Encouraging cancellation of a purchase agreement if cancellation is not in the best interests of the purchaser.

*b.* Encouraging a change in the funding method of a purchase agreement, including a change from one insurance company to another, if the change is not in the best interest of the purchaser.

*c.* Failure to leave a residence when requested to do so.

*d.* Intimidation or physical abuse, including improper sexual contact or conduct.

*e.* Any other act or practice that takes unfair or unreasonable advantage of the vulnerability of a purchaser or prospective purchaser based on age, poor health, infirmity, impaired understanding, restricted mobility, or disability.

**100.31(3) Disclosures.**

*a.* Reserved.

*b.* Prior to accepting an application, initial premium, or deposit for insurance which is to fund a purchase agreement, a preneed seller or sales agent must adequately disclose to the potential purchaser in writing all of the following:

(1) The relationship of the insurance to the funding of the purchase agreement and the nature and existence of any guarantees relating to the purchase agreement.

(2) The impact on the purchase agreement of any of the following:

1. Changes in the insurance including, but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;

2. Penalties to be incurred by the policyholder as a result of failure to make premium payments;

3. Penalties to be incurred or moneys to be received as a result of cancellation or surrender of the insurance.

(3) All merchandise or services to be supplied pursuant to the contract or purchase agreement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

(4) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the insurance and the amount actually needed to fund the purchase agreement.

(5) Any penalties including, but not limited to, penalties for the inability of the preneed seller to deliver merchandise or services or to fulfill the purchase agreement guarantee.

(6) Any restrictions including, but not limited to, geographic restrictions.

(7) Whether any sales commission or other form of compensation is being paid related to the insurance and the identity of the individual or entity to which the compensation is to be paid. It is not necessary that the amount be disclosed.

*c.* Reserved.

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*d.* Regardless of the type of funding for the purchase agreement, at the time of providing a written itemized cost estimate for the purchase of preneed merchandise or services:

(1) The sales agent shall provide to the potential purchaser a copy of the Iowa insurance division's Guide to Prearranged Funeral Plans, or a document in similar format and with substantially similar language.

(2) The sales agent shall include on the cost estimate clear statements indicating:

1. The date after which the estimate or proposal expires.

2. That prices are subject to change after the cost proposal expires.

3. That the prices provided are a nonbinding estimate and do not create a binding contract or agreement with the preneed seller.

(3) The sales agent shall provide a copy of the cost estimate to the potential purchaser and shall retain a copy of the cost estimate in the preneed seller's records for at least five years.

For purposes of this rule, a price list is not a cost estimate.

*e.* Regardless of the type of funding for the purchase agreement, a purchase agreement that describes the purchase price as "guaranteed" shall disclose the nature and details of the guarantee. For items described as "guaranteed," the purchaser, beneficiary and the beneficiary's estate shall not be obligated to pay additional costs if costs at the time merchandise or services are delivered or provided are greater than the funds available from the allocable portion of payments and accumulated income or growth, as long as the funding is not limited in any manner, such as by the failure to make contractual or premium payments.

*f.* If a purchase agreement is to be funded by a trust, the purchase agreement shall disclose that 100 percent of all payments related to merchandise or services described in the purchase agreement as "nonguaranteed" shall be placed in trust in accordance with Iowa Code section 523A.201(2).

**191—100.32** Reserved.

**191—100.33(523A) Records maintenance and retention.**

**100.33(1)** *By preneed sellers.*

*a. Time for retaining records.* If no other legal provision governs record retention, a preneed seller shall keep all records required to be kept by this rule either from the date of the preneed seller's last examination by the commissioner or for a minimum of five years after the date of the death of the beneficiary, whichever is sooner.

*b. Confidentiality.* The preneed seller shall keep social security numbers confidential.

*c. Sales log and numbering of purchase agreements.* A preneed seller shall maintain a sales log of purchase agreements, assigning numbers in sequential order to each purchase agreement sold during a calendar year.

(1) Prenumbered contracts are not required. If a contract is not prenumbered, the sales agent shall write the contract number on the purchase agreement at the time it is executed or in a document provided later to the purchaser.

(2) The copy of the purchase agreement given to the purchaser shall include the contract number assigned to the purchase agreement.

(3) If a correction to the contract number is required, the correction shall be recorded in the sales logs, and documentation that retains evidence of the initial number used shall be maintained.

(4) Preneed sellers shall use the following numbering system, unless they receive written permission from the commissioner to use a different system.

1. The first portion of the number shall be the year the contract was written.

2. The second portion of the number shall be sequential and indicate the number of contracts executed by the preneed seller, to date, in the applicable calendar year.

3. Additional suffixes may be used as follows:

- A preneed seller with multiple locations may use a suffix to identify each location by number.

- A preneed seller with multiple sales agents may use a numerical suffix to identify the sales agent.

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4. Each part of the number shall be separated by a hyphen.

An example of the numbering system is provided on the commissioner's Web site.

*d. Transaction records.* A preneed seller shall document all transactions with purchasers and prospective purchasers and maintain accurate copies and records of all purchase agreements.

*e. Deposit records.* Preneed sellers shall maintain records of all deposits made into accounts related to purchase agreements. If purchase agreement payments made to a preneed seller and funds not related to a purchase agreement are commingled and deposited together in a single account, or if a deposit to an account involves purchase agreement payments related to more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit showing the amounts related to the different purchase agreements.

**100.33(2)** *By sales agents.* A sales agent shall maintain a sales log for a minimum of five years after the sale. The sales log shall include all of the information required for the sales agent's annual report. Instructions and an example are available on the commissioner's Web site.

**191—100.34(523A) Changes in funding methods for or terms of purchase agreements.** When a preneed seller or sales agent changes the funding method for a prepaid purchase agreement, this rule applies.

**100.34(1)** *Change in funding of a purchase agreement.* When a purchaser changes the funding source for a purchase agreement from a bank account or trust account to funding through insurance, or from insurance funding from one insurance company to another:

*a.* This type of change is deemed to be an amendment to the purchase agreement, not a cancellation of the original purchase agreement.

*b.* The amendment to the purchase agreement may include other minor updates to the statement of goods and services.

*c.* The preneed seller shall do all of the following:

(1) Obtain a written, signed and dated statement from the purchaser requesting the change in funding and acknowledging the transaction in a way that demonstrates the purchaser understood the change in funding transaction. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(2) Describe the change in funding in a written amendment to the purchase agreement. The amendment shall be signed and dated by the purchaser and the preneed seller. A copy of the signed amendment shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(3) If the funding change is from a bank account to an insurance account, record the amendment on the preneed seller's annual report as a reduction in cash accounts and an increase in insurance accounts.

(4) If the funding change is from a trust account to an insurance account:

1. Confirm that the policy shall have an increasing benefit, as specified in Iowa Code section 523A.401(6).

2. Record the amendment on the preneed seller's annual report as both a withdrawal from trust and an addition of insurance. Instructions are available on the commissioner's Web site.

3. Comply with record-keeping and reporting requirements for the sale of new insurance in Iowa Code sections 523A.401 and 523A.402.

(5) If the change in funding is from one insurance company to another:

1. Document compliance with the disclosure requirements of rule 191—15.8(523A).

2. Comply with the replacement requirements of rule 191—16.24(507B).

3. Record the amendment on the preneed seller's annual report as a change in funding from one insurance company to another. Instructions are available on the commissioner's Web site.

(6) For record maintenance purposes, use the number for the original purchase agreement, not a new assigned number.

**100.34(2)** *Cancellation of a purchase agreement.* When a purchaser makes substantive changes to a purchase agreement:

*a.* This type of change is deemed to be a cancellation of the existing purchase agreement and requires the preneed seller to execute a new purchase agreement.

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*b.* The preneed seller shall do all of the following:

(1) Obtain a written signed and dated statement from the purchaser which cancels the existing purchase agreement. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(2) Obtain a written signed and dated statement from the purchaser which demonstrates that the purchaser understood the change from one purchase agreement to the other. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(3) Comply with the rescission requirements of Iowa Code section 523A.602.

(4) For record maintenance purposes, assign a new number for the new purchase agreement.

(5) Record the cancellation of the initial purchase agreement on its annual report.

**191—100.35(523A) Preneed seller's change of ownership and cessation of business operations.**

**100.35(1)** *Sale or transfer of purchase agreements or of business.* A preneed seller shall not change ownership of a business, sell all or part of a business, cease business, or sell or transfer purchase agreements as part of the sale of a business or the assets of a business, unless:

*a.* The preneed seller has notified the commissioner of the change at least 90 days prior to the sale or transfer.

*b.* The person receiving assets and purchase agreements has an active preneed seller's license at the time of the sale or transfer.

*c.* A certified public accountant has performed and filed with the commissioner an agreed-upon procedures (AUP) report or other audit acceptable to the commissioner, as required by Iowa Code section 523A.207.

*d.* The commissioner has conducted an examination of the sales and market practices of the preneed seller, if the commissioner requests.

*e.* The preneed seller has provided the commissioner with any other information required for the commissioner to approve the sale or transfer.

**100.35(2)** *Cessation of business by a preneed seller.* At least 90 days prior to the cessation of business operations, if a preneed seller voluntarily or involuntarily ceases doing business, and the preneed seller's obligation to provide merchandise or services has not been assumed by another preneed seller holding an active preneed seller's license, the preneed seller shall:

*a.* Send a notice to the commissioner, in a manner as directed by the commissioner. Pursuant to subrule 100.10(3), the commissioner shall place the preneed seller's license on restricted status when the preneed seller ceases doing business.

*b.* Send written notice of the proposed cessation of business to the purchaser and beneficiary, if different than the purchaser, of each purchase agreement by certified mail, return receipt requested. The notice shall indicate the preneed seller's ability to transfer any trust funds and transfer the proceeds from any insurance to another licensed preneed seller.

*c.* During the 90 days prior to the cessation of business operations, the preneed seller shall work with financial institutions and insurance companies to modify the title to financial accounts and modify assignments and ownership of annuities and insurance policies as necessary or distribute trust funds to the purchaser or transfer to another licensed preneed seller.

**100.35(3)** *Failure to notify the commissioner of a change of ownership, sale of a business, or cessation of business.*

*a.* A preneed seller's failure to notify the commissioner, as set forth in this rule, of a change of ownership of a business, sale of all or part of a business, cessation of business, or sale or transfer of purchase agreements as part of the sale of a business or the assets of a business may be a ground for penalty under rule 191—100.40(523A) or 191—100.41(523A).

*b.* If trust funds are transferred without compliance with this rule or with Iowa Code sections 523A.207 and 523A.602, the commissioner may petition for the appointment of a receiver pursuant to Iowa Code section 523A.811.

INSURANCE DIVISION[191](cont'd)

**100.35(4) Annual reports.** A preneed seller holding a restricted license shall continue to file annual reports pursuant to Iowa Code section 523A.204 regarding any purchase agreement not transferred to another seller holding a current preneed seller's license through an assumption agreement or otherwise.

For purposes of this rule, the sale of a business shall include any change of controlling interest in any corporation or other business entity.

**191—100.36 to 100.39** Reserved.

**191—100.40(523A) Prohibited practices for preneed sellers and sales agents.**

**100.40(1)** The commissioner may impose sanctions as set forth in Iowa Code section 523A.807 and rules 191—100.40(523A) and 191—100.41(523A), or place a license in restricted status, if the commissioner finds that a preneed seller, sales agent, or owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, this chapter, or any associated rules or implementing orders, or is otherwise unable to conduct activities as a preneed seller or sales agent.

**100.40(2)** Grounds for discipline include but are not limited to the following acts or practices:

*a. Fraudulent or deceptive practices.* Engaging in any act or practice that violates Iowa Code section 523A.701, 523A.702 or 523A.703, whether or not actual harm or injury occurs, including but not limited to:

- (1) Falsifying business records; or
- (2) Misappropriating funds.

*b. Responsibility for sales activities of others.* A preneed seller's consent or acquiescence to violation of this chapter or Iowa Code chapter 523A by any person acting on the preneed seller's behalf.

*c. Law violations.*

(1) Violating any state or federal law applicable to the conduct of the applicant's or licensee's business including, but not limited to, the following:

1. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;
2. Regulations promulgated by the Federal Trade Commission relating to merchandise or services, or funeral or cremation establishments;
3. Applicable tax or public health laws, ordinances or regulations; or
4. Laws, rules, ordinances, or regulations occurring outside of Iowa if the commissioner determines that such violation may adversely implicate the licensee's or applicant's compliance with Iowa laws, rules, orders, ordinances, or regulations.

(2) Conviction of a criminal offense, in any jurisdiction, involving dishonesty or a false statement, including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses. "Conviction" shall include a plea of guilty or a finding of guilt and shall include a deferred judgment.

*d. Sales prohibited by order.* The sale of merchandise or services by a preneed seller or sales agent who has been prohibited from selling services or merchandise in an order issued pursuant to Iowa Code section 523A.807(3).

*e. Returned checks or declined credit transactions.* Submitting to the commissioner an electronic payment which is returned to the commissioner by a bank without payment, or submitting a payment to the commissioner by credit card which the credit card company does not approve, or canceling or refusing amounts charged to a credit card by the commissioner.

*f. Failure to maintain records.* Failure to maintain records as required by Iowa Code chapter 523A or any associated rules or orders.

*g. Failure to cooperate with an examination or investigation.* Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code sections 523A.206, 523A.803, 523A.808 and 523A.811 and any associated rules or orders.

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

*h. Insolvency or unsound financial condition.* Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

- (1) The licensee's or license applicant's net worth;
- (2) Whether a financial institution has closed or otherwise taken adverse action against an account held by or on behalf of the licensee or license applicant;
- (3) The licensee or license applicant has exhibited a pattern of writing bad checks or otherwise overdrawn a business or trust account as a result of insufficient funds;
- (4) Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;
- (5) Untimely placement by the licensee of consumer funds into trust;
- (6) Failure of the licensee or license applicant to pay sales tax, unemployment tax or other tax owed in the course of business; or
- (7) Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A and related regulations.

*i. Inability to perform.*

(1) Inability to provide the merchandise or services which the licensee purports to sell, including but not limited to failing to employ or have a contractual arrangement with at least one person who is licensed to perform mortuary science services, as described in Iowa Code chapter 156, if such services are included in a purchase agreement.

(2) Inability to reasonably provide merchandise or services due to an impairment, drug or alcohol addiction, or other act, conduct or condition. A licensee who has had a physical or mental impairment or illness during the license period may request to be placed on restricted status by the commissioner. Any such request shall be submitted on a form as specified by the commissioner and must include a signed statement of a licensed health care professional which attests to the existence of a disability or illness during the license period.

*j. Suspension for failure to pay child support.*

(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent by regular mail to the sales agent's last-known address.

(2) The notice shall contain the following items:

1. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current license in 30 days;

2. A statement that the sales agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;

3. A statement that the sales agent's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;

4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;

5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and

6. A copy of the certificate of noncompliance.

(3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current license 30 days after the notice is issued.

(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted.

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

If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to this paragraph.

*k. Suspension for failure to pay student loan.*

(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this subrule shall apply.

(2) Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

(3) The notice shall contain the following items:

1. A statement that the commissioner intends to deny the sales agent's application or request for renewal or suspend the sales agent's license in 60 days;

2. A statement that the sales agent must contact the CSAC to request a withdrawal of the certificate of noncompliance;

3. A statement that the sales agent's application or request for renewal will be denied or the sales agent's license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the sales agent's license will be revoked;

4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 261.127;

5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and

6. A copy of the certificate of noncompliance.

(4) The effective date of revocation or suspension of a sales agent license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days after service of the notice upon the sales agent.

(5) In the event an applicant or licensed sales agent timely files a district court action pursuant to Iowa Code section 261.127, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

(6) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

(7) Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code section 261.126.

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

(8) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent's license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

(9) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying a sales agent subject to enforcement under Iowa Code chapter 261.

*l. Suspension for failure to pay state debt.*

(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this subrule shall apply.

(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current sales agent license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

(3) The notice shall contain the following items:

1. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current sales agent license in 60 days;

2. A statement that the sales agent must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;

3. A statement that the sales agent's application, request for renewal or current sales agent license will be denied or suspended if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 60 days of the issuance of notice under this rule; or, if the current sales agent license is on suspension, a statement that the sales agent's current sales agent license will be revoked;

4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 272D.9;

5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and

6. A copy of the certificate of noncompliance.

(4) Sales agents shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue, and sales agents shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to all court orders entered in such actions and copies of all withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

(5) The effective date of revocation or suspension of a sales agent license shall be 60 days following service of the notice upon the applicant or sales agent.

(6) In the event an applicant or licensed sales agent timely files a district court action following service of a notice by the commissioner, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

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

(7) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the sales agent, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code chapter 272D.

(9) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying sales agents subject to enforcement under Iowa Code chapter 272D.

**191—100.41(523A) Disciplinary procedures.**

**100.41(1) Investigations.** The commissioner is authorized by Iowa Code sections 17A.13(1) and 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

**100.41(2) Legal relationship of sales agent to preneed seller.** For purposes of Iowa Code section 523A.502(1), a sales agent offering preneed services on behalf of a preneed seller is deemed to have a legal relationship as an agent of the preneed seller. The determination of whether a sales agent and a preneed seller have a principal-agent relationship will be made by the commissioner based on the totality of the circumstances surrounding the business relationship.

**100.41(3) Factors used to determine whether a preneed seller has agreed to provide merchandise or services.**

a. Unless the lack of a mutual agreement has been appropriately documented in the preneed seller's preneed purchaser file records, a preneed seller has agreed "to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof" and received an "initial payment," for purposes of Iowa Code section 523A.102(23), if:

(1) A sales agent of the preneed seller has met in person, or had an interactive discussion by telephone or another form of electronic communication, and discussed specific items of merchandise or services and the price of the applicable merchandise or services with a potential purchaser and the potential purchaser did any of the following:

1. Transferred ownership of insurance to the preneed seller,
2. Assigned proceeds of insurance to the preneed seller, or
3. Established a financial account made payable on death to the preneed seller.

(2) A sales agent of the preneed seller has met in person, or had an interactive discussion by telephone or another electronic communication, and discussed specific items of merchandise or services and the applicable prices with the owner of a financial account for which the preneed seller has been named as the pay-on-death beneficiary to receive funds upon the death of the owner of the financial account.

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

*b.* Written documents retained in the preneed seller's records may rebut the presumption that a purchase agreement exists.

**100.41(4) Penalties.** Persons violating Iowa Code chapter 523A, this chapter, or any associated rules or implementing orders may be subject to one or more of the following penalties.

*a.* Pursuant to Iowa Code sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in the license being placed on restricted status. The licensee is not authorized to solicit or execute or amend any purchase agreement under Iowa Code chapter 523A until the license has been reinstated.

*b.* If the commissioner issues or renews a license and subsequently determines that the payment method was declined or returned without payment to the commissioner, the license shall be immediately placed on restricted status until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

*c.* The commissioner may impose the disciplinary sanctions of Iowa Code chapter 523A, and of this chapter, alone or in combination, against a preneed seller or sales agent, or as a condition of licensure of an applicant for a preneed seller license or sales agent license or as a condition of renewal of a license. Sanctions include but are not limited to the following:

- (1) Issuing a warning letter or a letter of reprimand.
- (2) Requiring additional education or training.
- (3) Requiring certain specified procedures or methods of operation.
- (4) Ordering the payment of consumer restitution.
- (5) Placing a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports.
- (6) Imposing costs associated with the commissioner's investigation and enforcement activities.
- (7) Imposing any other sanction allowed by law.

*d.* A person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, or any rules adopted or orders issued pursuant thereto.

These rules are intended to implement Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632.

ITEM 4. Rescind and reserve **191—Chapter 101 to Chapter 105.**

[Filed 11/4/15, effective 12/30/15]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2259C**

**INSURANCE DIVISION[191]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, the Insurance Division (the Division) hereby amends Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

Iowa Code chapter 502, among other things, prescribes the terms and conditions under which broker-dealers, investment advisers and securities offerings operate. This amendment to Chapter 50 implements 2015 Iowa Acts, House File 632, section 3, to allow intrastate crowdfunding as an exemption under Iowa Code section 502.202 and to establish procedures for persons to conduct intrastate crowdfunding on or after January 1, 2016. The effective date of 2015 Iowa Acts, House File 632, section 3, is January 1, 2016.

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

Notice of Intended Action (the Notice) was published in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2172C**. Written comments were accepted through October 21, 2015, and a public hearing was held on October 21, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa. No comments were received.

This Adopted and Filed version of the amendment is identical to the version published under Notice.

The amendment is subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

This amendment will impose no fiscal impact to the State.

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

This amendment is intended to implement Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632, section 3.

This amendment shall become effective January 1, 2016.

The following amendment is adopted.

Adopt the following **new** rule 191—50.90(502):

**191—50.90(502) Intrastate crowdfunding exemption.**

**50.90(1) Purpose and authority.**

*a.* The purpose of this rule is to set out the requirements, procedures and fees relating to the registration and conduct of intrastate crowdfunding, as established by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3.

*b.* This rule is authorized by Iowa Code section 502.605 and Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, and is intended to implement 2015 Iowa Acts, House File 632.

**50.90(2) Definitions.** For purposes of this rule, the definitions in Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632, and the following definitions shall apply unless the context requires otherwise:

“*Administrator’s Web site*” means the Web site of the Iowa insurance division, [www.iid.iowa.gov](http://www.iid.iowa.gov).

“*Issuer*” means a person that has filed a certificate of formation with the Iowa secretary of state and is authorized to do business in Iowa and has been approved by the administrator as a crowdfunding issuer pursuant to paragraph 50.90(8)“*a.*”

“*Management*” means an issuer’s directors or executive officers or the individuals who perform such functions for the issuer.

“*Portal Web site*” means the Internet Web site through which a registered Iowa crowdfunding portal provides intrastate crowdfunding offers and sales of exempt securities in Iowa.

“*Purchaser*” means an investor or person that purchases crowdfunding securities through an Iowa crowdfunding intermediary.

**50.90(3) Intermediary registration.** To act as a registered intermediary as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3:

*a.* A broker-dealer shall comply with the registration requirements of Iowa Code section 502.401; or

*b.* An entity that is not a broker-dealer acting as an Iowa crowdfunding portal shall register with the administrator by filing an Iowa crowdfunding portal registration, pursuant to subrule 50.90(4), and receiving approval of the registration by the administrator.

**50.90(4) Iowa crowdfunding portal registration.** To request administrator approval of a registration as an Iowa crowdfunding portal as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, a person shall submit all of the following to the administrator:

*a.* A completed Iowa crowdfunding portal registration form, available on the administrator’s Web site, including all required schedules and supplemental information.

*b.* A completed Form U-4, available on the administrator’s Web site, for each agent as defined in Iowa Code section 502.102(2).

*c.* Any other information requested by the administrator to determine the financial responsibility, business reputation, or qualifications of the Iowa crowdfunding portal.

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

d. The registration fee of \$100.

**50.90(5) Registration renewal.** Registration as an Iowa crowdfunding portal expires at the close of the calendar year. An Iowa crowdfunding portal may renew registration for the succeeding year by submitting to the administrator the appropriate renewal fee and a written request for renewal, including any material changes to the information submitted in the prior application. The administrator may request additional information as necessary.

**50.90(6) Duties of an Iowa crowdfunding portal.**

a. *Creation, maintenance and availability of portal Web site.* A registered Iowa crowdfunding portal shall create the portal Web site and shall maintain the portal Web site and make information and services available on or through the portal Web site in compliance with this rule.

b. *Background and regulatory checks.* Prior to offering securities to residents of Iowa, the Iowa crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal Web site and of each of the issuer's control persons. "Control persons" for purposes of this subrule means the issuer's officers or directors; other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20 percent of the outstanding equity of the issuer. The Iowa crowdfunding portal shall deny an issuer access to the portal Web site if:

(1) The issuer or any of its control persons are subject to a disqualification under Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, [new Iowa Code section 502.202(24)"b"(5)] or this rule;

(2) The issuer has engaged in or is engaging in or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person; or

(3) The Iowa crowdfunding portal cannot adequately or effectively assess the risk of fraud by the issuer or the issuer's potential offering.

c. *Purchaser screening.* Before a security is sold through an Iowa crowdfunding portal, the Iowa crowdfunding portal shall ensure that the purchaser does all of the following:

(1) Reviews the information provided in the offering documents.

(2) Provides to the Iowa crowdfunding portal an acknowledgment in writing from the purchaser that the purchaser received and acknowledged the disclosure statement provided to the purchaser by the issuer pursuant to paragraph 50.90(8) "b."

(3) Provides to the Iowa crowdfunding portal an affirmative representation that the purchaser is an Iowa resident.

d. *Information about the issuer and the offering.* The Iowa crowdfunding portal shall make available on the portal Web site information about the issuer and the offering. The information shall include all of the following:

(1) A copy of the disclosure statement required by paragraph 50.90(8) "b."

(2) A summary of the offering, including all of the following:

1. A description of the entity; its form of business, principal office, history, and business plan; and its intended use of the offering proceeds, including compensation paid to any owner, executive officer, director, or manager.

2. The identity of the executive officers, directors, and managers, including their titles and their prior experience, and the identity of all persons owning more than 20 percent of the ownership interests of any class of securities of the company.

3. A description of the securities being offered and of any outstanding securities of the company, the amount of the offering, and the percentage ownership of the company represented by the offered securities.

e. *Portal Web site forum.* The Iowa crowdfunding portal shall maintain a forum on its portal Web site. The forum shall be available to all potential purchasers as well as to the administrator. The portal Web site shall contain a disclaimer which states that access to securities offered on the portal Web site is limited to Iowa residents and that offers and sales of the securities appearing on the portal Web site are limited to persons that are Iowa residents. Potential purchasers may ask questions and receive answers concerning the terms and conditions of the offering and may obtain any additional information which

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

the crowdfunding issuer possesses or can acquire without unreasonable effort or expense necessary to verify the accuracy or clarify the information provided on the portal Web site.

*f. Enforcement of investment limits.* The Iowa crowdfunding portal shall take reasonable measures to ensure that no purchaser exceeds the sales limits set forth in Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 [new Iowa Code section 502.202(24) “c” and “d”].

*g. Administrator access.* The Iowa crowdfunding portal shall provide the administrator purchaser-level access at all times to the portal Web site, pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 [new Iowa Code section 502.202(24) “g”(8)].

**50.90(7) Prohibited conduct for Iowa crowdfunding portals.** An Iowa crowdfunding portal and individuals of the Iowa crowdfunding portal’s management:

- a.* Shall have no ownership or other financial interest in the crowdfunding issuer.
- b.* Shall not hold, manage, possess, or otherwise handle purchaser funds or securities.
- c.* Shall not compensate employees, agents or other persons not registered with the administrator for soliciting offers or sales of securities displayed or referenced on the Iowa crowdfunding portal.
- d.* Shall not hold, manage, possess or otherwise handle purchaser funds or securities.
- e.* Shall not be affiliated with or under common control with an issuer whose securities appear on the portal Web site.
- f.* Shall not hold a financial interest in any issuer offering securities on the portal Web site.
- g.* Shall not receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer.

**50.90(8) Duties of a crowdfunding issuer:**

*a. Notice to administrator.* Pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, at least 30 days prior to the offer of any security in this state in reliance upon the exemption provided by this rule, the crowdfunding issuer shall file with the administrator for approval a crowdfunding exemption notice application form, available on the administrator’s Web site.

(1) The following entities may not act as issuers nor may they file a crowdfunding exemption notice application form:

1. A company that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities.
2. A company that has not yet defined its business operations, that has no business plan, that has no stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity.

(2) For a filing to be approved, the crowdfunding issuer shall demonstrate to the satisfaction of the administrator the following:

1. The crowdfunding issuer is an Iowa entity that has filed a certificate of formation with the Iowa secretary of state and is authorized to do business in Iowa;
2. The principal office of the issuer is located in Iowa;
3. At least 80 percent of the issuer’s gross revenue during its most recent fiscal year prior to the offering is derived from the operation of a business in Iowa;
4. At least 80 percent of the issuer’s assets at the end of its most recent semiannual period prior to the offering are located in Iowa; and
5. At least 80 percent of the net proceeds of this offering will be used by the issuer in connection with the operation of its business within Iowa.

*b. Disclosure document.* A disclosure document shall be made readily available and accessible on the portal Web site to each potential purchaser at the time the offer of securities is made to the potential purchaser. The disclosure document shall contain all of the following information:

- (1) That no ready market exists for the sale of the securities acquired from the offering; that it may be difficult or impossible for a purchaser to sell or otherwise dispose of the investment; and that a purchaser may be required to hold and bear the financial risks of this investment indefinitely.

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

(2) That the securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.

(3) That, in making an investment decision, purchasers shall rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved.

(4) That no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on the portal Web site.

(5) All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. Guidance on information to be included may be found by reviewing the small corporate offering registration (SCOR) information provided on the administrator's Web site. Topics to be addressed include, but are not limited to:

1. General description of the issuer's business;
2. History of the issuer's operations and organization;
3. Management of the company and principal stockholders;
4. How the proceeds from the offering will be used;
5. Target offering amounts and escrow requirements, related to subrule 50.90(11);
6. Financial information about the issuer;
7. Description of the securities being offered; and
8. Litigation and legal proceedings.

(6) Current financial statements certified by the principal executive officer to be true and complete in all material respects and in accordance with generally accepted accounting principles (GAAP). If the issuer has prepared within the prior three years audited or reviewed financial statements, those shall also be provided to purchasers.

*c. Provision of sales reports.* An issuer shall provide to the administrator a sales report detailing the amount of securities sold in Iowa at the close of the offering. The administrator may request additional reports at any time.

**50.90(9) Compensation and fees.**

*a.* A commission or other remuneration shall not be paid or given, directly or indirectly, for the offer or sale of the securities unless the person receiving such compensation is acting as an Iowa crowdfunding portal pursuant to subrule 50.90(3) or is an agent identified by the Iowa crowdfunding portal pursuant to paragraph 50.90(4) "b."

*b.* The issuer shall not provide a financial interest in the issuer as compensation for services provided to or on behalf of the issuer to a person acting as an Iowa crowdfunding portal pursuant to subrule 50.90(3) or as an agent identified by the Iowa crowdfunding portal pursuant to paragraph 50.90(4) "b."

**50.90(10) Advertising and communications.**

*a.* The crowdfunding issuer shall not advertise the specific details of the offering, except for notices which direct potential purchasers to the portal Web site. Notwithstanding the foregoing, the issuer may distribute a notice within Iowa that the issuer is conducting an offering of securities and that includes the name of the registered Iowa crowdfunding portal through which the offering is being conducted and a link directing the potential investor to the registered Iowa crowdfunding portal. The notice shall contain a disclaimer that the offer or sale of the security is limited to persons that are Iowa residents.

*b.* Communications. All communications between the issuer and potential purchasers taking place during the offer of securities pursuant to this rule shall occur through the portal Web site of the registered Iowa crowdfunding portal. During the time the securities are being offered on the portal Web site, the Iowa crowdfunding portal shall, pursuant to paragraphs 50.90(6) "d" and "e," provide channels through which potential purchasers can communicate with one another and with the issuer about the securities being offered. These communications shall be visible to all those with access to the portal Web site.

(1) An issuer shall respond within ten days to requests for information made by potential purchasers or by the administrator through the portal Web site.

INSURANCE DIVISION[191](cont'd)

(2) If such additional information is material and not previously included on the portal Web site, the crowdfunding issuer and the Iowa crowdfunding portal shall immediately amend the information contained on the portal Web site to provide such material information.

**50.90(11) Target amount, offering period, and escrow requirements.**

a. The crowdfunding issuer shall establish a target offering amount and include it in the disclosure document. More information regarding the establishment of a target amount may be found on the administrator's Web site.

b. The offering period shall not exceed 12 months from the date of filing of the notice required by paragraph 50.90(8) "a."

c. All offering proceeds shall be held in an escrow account, maintained in a custodial account in a state or federal financial institution located in Iowa, until offering proceeds (less any offering proceeds from the crowdfunding issuer or its management or affiliates) totaling at least the target offering amount are received.

d. If the target offering amount is not received by the end of the offering period, the proceeds shall be returned to the purchasers within 30 days.

e. All purchasers shall have the right to withdraw their investments, without deduction of any kind, until such time as offering proceeds totaling at least the target offering amount are received and the offering proceeds are released by the qualified custodian from the escrow account to the crowdfunding issuer.

**50.90(12) Offering price.** The offering price of the securities offered and sold pursuant to this exemption shall be the same for all purchasers and shall not be increased during the offering period. The offering price may be lowered, but only if all previous purchasers in the particular offering are notified of the change and allowed to rescind their previous investment and participate at the lower offering price.

**50.90(13) Resales of securities.** On the document that is to serve as evidence of ownership, the issuer shall place a prominent notice which states that the securities have not been registered and which sets forth limitations on resale contained in SEC Rule 147(e), 17 CFR §230.147(e), including that, for a period of nine months from the date of last sale by the issuer of the securities in the offering, all resales by any person shall be made only to Iowa residents.

This rule is intended to implement Iowa Code section 502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632.

[Filed 11/4/15, effective 1/1/16]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2245C**

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 103.6, the Electrical Examining Board hereby amends Chapter 501, "Electrician and Electrical Contractor Licensing Program—Administrative Procedures," Chapter 502, "Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees," Chapter 505, "Electrician and Electrical Contractor Licensing Program—Education," and Chapter 550, "Electrical Inspection Program—Organization and Administration," Iowa Administrative Code.

Iowa Code chapter 103 establishes the Iowa Electrician and Electrical Contractor Licensing Program and creates the Electrical Examining Board with authority to adopt rules that establish standards for the safety of electrical work and that govern all aspects of the licensing of electricians and electrical contractors and of the electrical inspection program.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Notice of Intended Action was published in the July 8, 2015, Iowa Administrative Bulletin as **ARC 2057C**. A public hearing was held on August 20, 2015, at 10 a.m. in Room 125 of the Oran Pape State Office Building. There were no public comments made, nor were any written comments submitted on or before that date. These amendments are identical to those published under Notice.

The Electrical Examining Board adopted these amendments on October 15, 2015.

Amendments to Chapters 501 and 502

The amendments to Chapters 501 and 502 establish procedures for the issuance of licenses to master electricians licensed in states which have entered into reciprocal licensing agreements with the Board, establish procedures for the refunding of licensing fees, and correct, through the rescission of subrule 501.5(2), the mailing address of the Board for submitting requests for waivers of administrative rules to the Board.

Amendments to Chapter 505

The amendments to Chapter 505 update rules regarding postsecondary education requirements, clarify requirements for qualification for a journeyman license, and set requirements for qualification for a residential electrician license.

The postsecondary electrical education program established by the Board is designed to provide quality educational opportunities and on-the-job experience for persons with an interest in and an aptitude for electrical work. The structure of the Iowa statute allows the Board to provide three alternative methods for persons to qualify for licensing: (1) a certified apprenticeship program; (2) documented on-the-job training; and (3) postsecondary educational programs. These alternatives accommodate the needs of a variety of persons. Certified apprenticeship programs are not always available to every interested person in Iowa, and for some individuals, a community college-based educational program is the most accessible and affordable alternative. The Board has worked with Iowa community colleges to develop successful programs that combine academic and practical training for persons who seek journeyman electrician training. The community colleges now have the capacity to provide similar programs for residential electricians.

Having these community college-based programs for both journeyman and residential electrician training helps to keep Iowa competitive with other states offering similar programs and facilitates opportunities for stable, well-paid jobs for properly trained electricians.

Amendments to Chapter 550

The amendments to Chapter 550 update rules regarding the organization's reporting structure and the electrical inspection programs operated by political subdivisions to clarify requirements for certification of electrical inspectors.

The organization of the State Fire Marshal's office has changed since the rules in Chapter 550 were initially implemented, and the amendments to rules 661—550.1(103) and 661—550.3(103) reflect a more streamlined organization within the State Fire Marshal's office.

The certification standards for political subdivisions established by the Board are designed to implement specific guidance on the type of certification required to comply with Iowa Code section 103.24(1)“b.” The amendments to rule 661—550.4(103) provide uniformity throughout the state regarding electrical inspections, while providing cities and counties the flexibility allowed by law.

Within the electrical trade, there are two primary sources for certification of residential and commercial electrical inspectors: the International Association of Electrical Inspectors and the International Code Council. The standards for both associations are similar, and both inspector certification programs are designed to ensure that inspectors are properly trained to identify deficiencies that may affect public safety and welfare.

Iowa Code chapter 103 provides for the gradual implementation of licensing and certification requirements, including requirements for political subdivisions to comply with statewide standards for certification of inspectors as of January 1, 2014. The amendments to rule 661—550.4(103) implement uniform standards across the state for all electrical inspectors, as provided in Iowa Code sections 103.24 and 103.29.

Before initiating the amendments to rule 661—550.4(103), the Board surveyed municipalities in Iowa to determine how many currently engage in inspections, how many have certified inspectors, and how

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

many planned to continue their own inspection programs after January 1, 2014. Of the 49 municipalities that reported that they currently provide their own electrical inspections, about half already certify their inspectors, and nearly every municipality had plans to require certification or were exploring how to obtain certification for their electrical inspectors.

Although state inspectors are required to obtain certification to conduct both residential and master (or residential and commercial) inspections, rule 661—550.4(103) as amended herein would allow a city or county to limit its inspectors' duties. Thus, if a local inspector's duties are limited to only residential inspections or only commercial inspections, it is necessary for the local inspector to obtain certification for only those limited duties. This approach provides flexibility to the city or county and its employees, while also protecting public safety.

Any fiscal impact is expected to be minimal and less than \$100,000 annually or \$500,000 during the next five years.

Rules of the Electrical Examining Board are subject to the waiver provisions of rule 661—501.5(103). The Board does not have authority to waive requirements established by statute.

Electrical demands continue to increase as advances in technology require more electrical wiring, and more complex electrical wiring, to meet changing needs. Proper electrical wiring is essential to public safety, as well as resource efficiency. The Bureau of Labor Statistics estimated a 23 percent growth rate for electricians between 2010 and 2020, faster than the national average for all occupations. Additionally, the occupational employment statistics (OES) wage survey shows that Iowa electricians have an average annual income of \$46,980, which is higher than the average for all occupations. National statistics provide similar conclusions about electricians across the United States. Proper educational preparation allows graduates the opportunity to obtain jobs that pay well and helps to improve public safety.

A strong economy that results in increased construction means an increased demand for qualified electrical contractors and electricians, from Iowa and from other states, and also increases the demand for certified electrical inspectors who can ensure the safety of Iowans.

United States Census data show that Iowa suffered less and has recovered faster than its neighboring states during the latest recessionary period. Similarly, Associated General Contractors of America data also show that Iowa's economic recovery has occurred faster than the national average. In fact, construction employment in Iowa rose 7 percent from 2008 to 2012, in comparison to the national average of just 1.3 percent, and Iowa ranked fourth out of 51 jurisdictions in its construction employment numbers. Given Iowa's economic edge in recovering from the recessionary period in 2008 to 2010, it is not surprising that measures of both residential and nonresidential construction are stronger in Iowa in comparison to its neighbors.

In addition, this rule making provides for uniform inspection standards throughout the state. New construction and improvements in existing infrastructure may place increased demands on local resources. Providing uniform standards for electrical inspection translates into uniform business expectations for the construction industry, the insurance industry, and the utilities that provide power to all Iowa communities. Certified inspectors can increase public safety and reduce costs associated with dangerous electrical wiring.

Finally, the recent initiatives to attract returning veterans to Iowa may mean that more veterans will be eligible for jobs as electricians in Iowa if they receive appropriate training or if reciprocity agreements are in place. Some veterans may have educational benefits that could be used for postsecondary education to become licensed electricians. These veterans could benefit from the increasing number of such programs in Iowa, and the state can benefit from the experience of veterans who choose to live and work in Iowa. In addition, the amendments may mean that more veterans will be eligible for jobs as certified electrical inspectors in Iowa municipalities. Recently adopted rules better accommodate the training and experience of veterans who conducted electrical work during their military service. The military training and experience may allow veterans to work as inspectors in Iowa's municipalities.

In summary, after analysis and review of this rule making, a positive impact on jobs is anticipated. This rule making lessens the burden for electricians to enter into Iowa's market. Further, this rule making should allow Iowans to obtain business in other markets. The Board will continue to work with stakeholders to maximize this rule making's positive impact on jobs.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

These amendments are intended to implement Iowa Code sections 103.6, 103.12, 103.12A, 103.21, 103.24 and 103.29.

These amendments will become effective December 30, 2015.

The following amendments are adopted.

ITEM 1. Rescind and reserve subrule **501.5(2)**.

ITEM 2. Amend subrule 502.2(14), introductory paragraph, as follows:

**502.2(14)** Reciprocal journeyman licensing. A journeyman class A license may be issued, without examination, to a person who holds a license from another state provided that:

ITEM 3. Adopt the following new subrule 502.2(15):

**502.2(15)** Reciprocal master licensing. A master class A license may be issued, without examination, to a person who holds an equivalent license from another state provided that:

*a.* The board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the examination required for the license issued by the other state and the examination required for the Iowa license to be issued; and

*b.* The applicant has successfully completed a supervised written examination approved by the other state, with a score of 75 or higher, in order to obtain the license from the other state; and

*c.* The applicant holds an applicable license from the other state at the time the application for an Iowa license is filed and has held the applicable license from the other state continuously for one year at the time the application for an Iowa license is filed; and

*d.* The applicant has submitted:

(1) A completed application for the Iowa license;

(2) A copy of the applicable license from the other state, clearly showing the license number and any other identifying information;

(3) The applicable fee;

(4) Any other information required by the board, which may include, but is not limited to, additional evidence that the person's license from the other state is currently valid; and

*e.* The applicant has either:

(1) Completed an approved apprenticeship program; or

(2) Completed 16,000 hours of electrical work as an electrician licensed by the other state, documented by a sworn affidavit signed by the applicant.

ITEM 4. Adopt the following new subrule 502.3(6):

**502.3(6)** Refunds of license fees shall be made under the following circumstances:

*a.* If an error on the part of the staff or the applicant or licensee has resulted in an overpayment of fees, the refund shall be in the amount of overpayment and shall be made if the overpayment is discovered by staff of the board or if the overpayment is discovered by the applicant or licensee and the applicant or licensee requests a refund.

*b.* If an applicant for an initial license or a renewal license dies prior to the effective date of a license for which the applicant has applied and paid the applicable fee, the license fee shall be refunded to the estate of the applicant upon receipt of a request from the estate of the applicant, accompanied by a certified copy of the death certificate.

ITEM 5. Amend rule 661—505.101(103) as follows:

**661—505.101(103) Program approval.**

**505.101(1)** ~~Any~~ Pursuant to Iowa Code sections 103.12 and 103.12A, an educational institution that plans to offer a postsecondary electrical education program to prepare students to be licensed by the board shall seek approval for the program before students participate in the program. Separate approval is required for a journeyman electrician program and for a residential electrician program.

**505.101(2)** The educational institution shall submit an application to the board office on a form specified by the board. ~~Only applications from institutions which are~~ An educational institution

PUBLIC SAFETY DEPARTMENT[661](cont'd)

that submits an application must provide certification that the institution is currently accredited by a recognized regional or national educational accrediting organizations shall be approved organization.

~~505.101(2)~~ For any postsecondary electrical education program for which approval is sought on or after September 1, 2011, approval by the board shall be obtained prior to student participation in the postsecondary electrical education program.

~~505.101(3)~~ An educational institution seeking initial approval of a journeyman electrician program or a residential electrician program must submit an application for initial approval of a postsecondary electrical education program shall be submitted to the board not less than 120 at least 60 days prior to student participation in the program.

~~505.101(4)~~ Approval of a postsecondary electrical education program is normally for five years, although approval may be withdrawn for cause prior to the expiration of the five-year period. The board shall set times for periodic review of approved programs and shall develop policies that address the following:

a. Requirements for the submission of applications.

b. Standards required for program approval.

c. Standards for withdrawal of approval or discontinuation of an approved program.

d. Standards for educational content and class attendance, qualifications for instructors, documentation and reporting required to establish compliance with program requirements, and specification of degrees or diplomas awarded.

~~505.101(5)~~ Applications for renewal of approval of postsecondary electrical education programs shall be submitted to the board at least 120 days prior to the expiration of the five-year approval period.

~~505.101(6)~~ 505.101(5) Information regarding approved postsecondary electrical education programs may be obtained by contacting the board office. A list of approved postsecondary electrical education programs and other information about postsecondary electrical education programs shall be posted on the board's Web site.

ITEM 6. Amend rule 661—505.102(103) as follows:

**661—505.102(103) Standards for postsecondary electrical education programs.** ~~A postsecondary electrical education program shall not be approved unless it meets all of the following requirements: Policies developed by the board shall meet the following minimum standards:~~

~~505.102(1)~~ 505.102(1) The A postsecondary electrical education program shall include coverage of subject matter areas listed in the document “Required Subjects for Postsecondary Electrical Education Programs,” approved and published by the board and available on request from the board office and from the board Web site. ~~Included in addition to~~ Every approved postsecondary electrical education program must include the technical electrical subjects shall be set out in the policy, which must include at least 4 hours of instruction on the Iowa electrical statute, Iowa Code chapter 103, with a minimum of 1 hour on Iowa electrical licensing requirements.

~~505.102(2)~~ 505.102(2) Completion of the course of study shall require a minimum of 2,000 contact hours between the student and instructors, of which a minimum of 1,600 hours shall cover technical electrical subjects. Between 30 and 40 percent of the 2,000 hours shall be lecture hours, and the balance shall be laboratory or shop hours. Approved postsecondary electrical education programs must include a minimum number of contact hours, as specified in the policy adopted by the board. Each approved program must establish attendance policies that are specified in the policy adopted by the board. Each approved program must include 30 to 40 percent of contact hours that involve lecture, and the remaining hours must be laboratory or shop hours. In addition to completing the contact hours, each student must complete the specified number of hours of on-the-job training before the student is permitted to take the licensing examination.

~~505.102(3)~~ 505.102(3) The program shall have an attendance policy which requires that a student attend at least 95 percent of each required program course to receive credit for the course. A postsecondary electrical education program for a journeyman electrician license shall include at least 2000 hours of instruction, and the student must complete at least 6000 hours of on-the-job training before the student can become eligible to take the journeyman electrician examination. A postsecondary electrical education program

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

for a residential electrician license shall include at least 1000 hours of instruction, and the student must complete at least 4000 hours of on-the-job training before the student can become eligible to take the residential electrician examination.

~~505.102(4) Each instructor shall possess one of the following qualifications: The board shall establish in its policy the minimum qualifications for instructors in a postsecondary electrical education program, which shall include:~~

~~a. Hold a current license as a class A master electrician or class A journeyman electrician issued by the board; or Current licensing as an electrician, as set out in the board's policy; and~~

~~b. Hold a bachelor of science degree or equivalent or higher degree in electrical engineering and have completed 4,000 hours of experience performing electrical work; or Compliance with standards set by the Iowa department of education for an instructor at a community college.~~

~~c. Hold an associate of applied science or equivalent or higher degree in electrical construction or maintenance or both and have completed 8,000 hours of experience performing electrical work.~~

~~505.102(5) For each course limited to a specialized technical or general education area, the instructor shall possess evidence of related specialized technical knowledge, including completion of training, certification, or accreditation in the specialized subject matter.~~

ITEM 7. Amend rule 661—550.1(103) as follows:

**661—550.1(103) Electrical inspection program.** The electrical inspection program is created as a section ~~within the building code bureau~~ in the fire marshal division of the department of public safety. The program is under the general supervision of the state fire marshal ~~and the direct supervision of the building code commissioner~~, and shall be headed by a chief electrical inspector. The program shall enforce requirements for electrical installations adopted by the electrical examining board in 661—Chapter 504.

ITEM 8. Amend rule 661—550.3(103) as follows:

**661—550.3(103) Organization.** The electrical inspection section shall be headed by a chief electrical inspector. Reporting directly to the chief electrical inspector shall be electrical inspector supervisors, each of whom shall head a unit which shall include a number of electrical inspectors assigned by ~~the building code commissioner and~~ the chief electrical inspector. Each unit supervisor may designate electrical inspectors as lead workers with the approval of the chief electrical inspector and consistent with any applicable rules of the department of administrative services.

ITEM 9. Amend rule 661—550.4(103) as follows:

**661—550.4(103) Qualifications of inspectors.**

**550.4(1) State inspectors.** Electrical inspectors, electrical inspector supervisors, and the chief electrical inspector shall be certified as commercial and residential electrical inspectors no later than one year after starting employment in any of these positions.

*a. Certification as inspector.* Certification shall be obtained from the International Association of Electrical Inspectors, P.O. Box 830848, Richardson, TX 75080-0848, as both a certified electrical inspector—residential and as a certified electrical inspector—master; or from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, as both a residential electrical inspector and a commercial electrical inspector.

*b. Other job requirements.* Each of the persons employed in these classifications shall also meet any requirements established by the department of administrative services, human resource enterprise, for the job classification in which the person is employed.

**550.4(2) Political subdivision inspectors.** A political subdivision that chooses to perform its own inspections on or after January 1, 2014, must require certification of its inspectors as provided in Iowa Code section 103.29.

*a. Certification as inspector.* A person who is employed or appointed as an electrical inspector for a political subdivision on or before January 1, 2014, must obtain certification on or before January

PUBLIC SAFETY DEPARTMENT[661](cont'd)

1, 2015. A person employed or appointed as an electrical inspector after January 1, 2014, must obtain certification within one year of the appointment date. The board may take action to enforce statutory compliance by the individual or by the political subdivision if a person employed or appointed as an inspector fails to obtain certification within one year of employment or appointment or fails to maintain the required certification while employed as an inspector.

b. Certification requirements. Certification of electrical inspectors for political subdivisions shall be obtained from the International Association of Electrical Inspectors as a certified electrical inspector–residential or as a certified electrical inspector–master or both or from the International Code Council as a residential electrical inspector or a commercial electrical inspector or both.

c. Inspections. A political subdivision has the authority to limit an inspector’s duties to only residential inspections or only commercial inspections, so long as the inspector assigned to those duties obtains and maintains the proper certification to conduct the inspections assigned.

d. Other job requirements. The political subdivision may impose other job requirements consistent with the law and the needs of that political subdivision.

[Filed 10/27/15, effective 12/30/15]

[Published 11/25/15]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2247C**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 421.14, and 452A.59, the Department of Revenue hereby amends Chapter 67, “Administration,” and Chapter 68, “Motor Fuel and Undyed Special Fuel,” Iowa Administrative Code.

The amendments are necessary to reflect the enactment of 2015 Iowa Acts, Senate File 257. 2015 Iowa Acts, Senate File 257, modifies the rate of excise taxes on motor fuel and special fuel, and it establishes a biodiesel distribution percentage formula. The amendments also update terminology and references to the Iowa Code.

Notice of Intended Action was published in IAB Vol. XXXVIII, No. 5, p. 351, on September 2, 2015, as **ARC 2123C**. The Department received one comment from the public regarding the provisions on blending errors in rule 701—68.4(452A). The commenter requested that the Department modify the proposed amendments to adopt a 1 percent tolerance for blending errors, consistent with industry standards. The Department agreed with adopting a 1 percent tolerance for blending errors, which resulted in changes to paragraphs 68.4(2)“c” and 68.4(3)“c.”

After analysis and review of this rule making, the Department finds that the amendments related to 2015 Iowa Acts, Senate File 257, are likely to have a positive impact on jobs. The Legislative Services Agency estimated that the rate change for motor fuel and special fuel for motor vehicles will increase deposits to the road use tax fund by about \$200 million per fiscal year from FY 2016 through FY 2020. As expressed in the Act, the General Assembly intended that a significant amount of these increased deposits will fund critical road and bridge construction projects, which will create jobs. The Legislative Services Agency also estimated that the rate change for aviation special fuel (aviation jet fuel) will increase deposits to the state aviation fund by \$790,000 per fiscal year from FY 2016 through FY 2020. Increased deposits to the state aviation fund will create jobs by funding additional airport grants, aviation-related services, special projects, and statewide planning.

These amendments are intended to implement Iowa Code section 452A.3 as amended by 2015 Iowa Acts, Senate File 257.

These amendments will become effective on December 30, 2015.

The following amendments are adopted.

## REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Amend rule **701—67.1(452A)**, definitions of “Blender” and “Supplier,” as follows:

*“Blender”* means a person who owns and blends ~~ethanol with gasoline~~ two or more fuels, including ethanol or biodiesel, at a nonterminal location to produce ethanol blended gasoline and blends the product at a nonterminal location or biodiesel blended fuel. The person is not restricted to blending ethanol with gasoline or biodiesel with diesel. ~~Products blended with gasoline other than ethanol are taxed as gasoline.~~ *“Blender”* also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel according to its fuel and alcohol content, which may result in additional tax due or an allowable refund for the blender. See rule ~~701—68.4(452A)~~.

*“Supplier”* means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in ~~gasoline fuel~~; a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, biofuel, biodiesel, alcohol, or alcohol derivative substances; or a person who produces, manufactures, or refines motor fuel or special fuel in this state. *“Supplier”* includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. *“Supplier”* does not include a retail dealer or wholesaler who merely blends alcohol with gasoline or biofuel with diesel before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

ITEM 2. Adopt the following **new** definitions of “B-11,” “Biodiesel distribution percentage” and “Petrodiesel” in rule **701—67.1(452A)**:

*“B-11”* means biodiesel blended fuel formulated with a minimum percentage of 11 percent by volume of biodiesel, if the formulation meets the standards provided in Iowa Code section 214A.2. A similar notation refers to biodiesel blended fuel containing other percentages of biodiesel. For example, “B-5” means biodiesel blended fuel formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided in Iowa Code section 214A.2.

*“Biodiesel distribution percentage”* means the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state during the determination period. The determination period is the previous calendar year.

*“Petrodiesel”* means petroleum-based diesel fuel. Petrodiesel contains no biodiesel.

ITEM 3. Amend rule 701—67.21(452A) as follows:

**701—67.21(452A) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections ~~422.52(3)~~ 423.35 and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

**67.21(1)** and **67.21(2)** No change.

This rule is intended to implement Iowa Code sections ~~422.52(3)~~ 423.35 and 452A.66.

ITEM 4. Amend subrule 68.2(1) as follows:

**68.2(1)** The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

## REVENUE DEPARTMENT[701](cont'd)

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004) 20.5¢ per gallon (for July 1, 2004, through June 30, 2005) 20.7¢ per gallon (for July 1, 2005, through June 30, 2006) 21¢ per gallon (for July 1, 2006, through June 30, 2007) 20.7¢ per gallon (for July 1, 2007, through June 30, 2008) 21¢ per gallon (for July 1, 2008, through <del>June 30</del> February 28, 2015) <u>31¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>30.8¢ per gallon (beginning July 1, 2015)</u>
LPG	20¢ per gallon
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through <del>June 30</del> February 28, 2015) <u>29¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.3¢ per gallon (beginning July 1, 2015)</u>
E-85 gasoline	17¢ per gallon <del>beginning</del> (for January 1, 2006, through June 30, 2007) 19¢ per gallon (for July 1, 2007, through <del>June 30</del> February 28, 2015) <u>29¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.3¢ per gallon (beginning July 1, 2015)</u>
Aviation gasoline	8¢ per gallon (beginning July 1, 1988)
<del>Special fuel (biodiesel, diesel, LNG)</del>	<del>22.5¢ per gallon</del>
<u>Diesel fuel other than B-11 or higher</u>	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (beginning March 1, 2015)</u>
<u>Biodiesel blended fuel (B-11 or higher)</u>	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.5¢ per gallon (beginning July 1, 2015)</u>
<del>Special fuel (aircraft)</del> <u>Aviation jet fuel</u>	<u>3¢ per gallon (on and before February 28, 2015)</u> <u>5¢ per gallon (beginning March 1, 2015)</u>
L.P.G.	<u>20¢ per gallon (on and before February 28, 2015)</u> <u>30¢ per gallon (beginning March 1, 2015)</u>
C.N.G.	<del>21¢ per gallon</del> <u>16¢ per 100 cu. ft. (on and before June 30, 2014)</u> <u>21¢ per gallon (for July 1, 2014, through February 28, 2015)</u> <u>31¢ per gallon (beginning March 1, 2015)</u>
L.N.G.	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (beginning March 1, 2015)</u>

ITEM 5. Amend subrule 68.2(2) as follows:

**68.2(2) Fuel distribution percentages.**

*a. Ethanol distribution percentage.*

(1) Except as otherwise provided in this ~~subrule paragraph~~, ~~until June 30, 2015~~ for March 1, 2015, ~~through June 30, 2020~~, this ~~subrule paragraph~~ shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the ethanol distribution percentage. The ethanol distribution percentage is the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

## REVENUE DEPARTMENT[701](cont'd)

Ethanol Distribution %	Ethanol Tax	Gasoline Tax
00/50	<del>19.0</del> <u>29.0</u>	<del>20.0</del> <u>30.0</u>
50+/55	<del>19.0</del> <u>29.0</u>	<del>20.1</del> <u>30.1</u>
55+/60	<del>19.0</del> <u>29.0</u>	<del>20.3</del> <u>30.3</u>
60+/65	<del>19.0</del> <u>29.0</u>	<del>20.5</del> <u>30.5</u>
65+/70	<del>19.0</del> <u>29.0</u>	<del>20.7</del> <u>30.7</u>
70+/75	<del>19.0</del> <u>29.0</u>	<del>21.0</del> <u>31.0</u>
75+/80	<del>19.3</del> <u>29.3</u>	<del>20.8</del> <u>30.8</u>
80+/85	<del>19.5</del> <u>29.5</u>	<del>20.7</del> <u>30.7</u>
85+/90	<del>19.7</del> <u>29.7</u>	<del>20.4</del> <u>30.4</u>
90+/95	<del>19.9</del> <u>29.9</u>	<del>20.1</del> <u>30.1</u>
95+/100	<del>20.0</del> <u>30.0</u>	<del>20.0</del> <u>30.0</u>

(2) Except as otherwise provided in this ~~subrule~~ paragraph, after June 30, ~~2015~~ 2020, an excise tax of ~~20~~ 30 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

*b. Biodiesel distribution percentage.*

(1) Except as otherwise provided in this paragraph, for July 1, 2015, through June 30, 2020, this paragraph shall apply to the excise tax imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the biodiesel distribution percentage. The biodiesel distribution percentage is the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state. The number of gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles distributed in this state shall be based on the total taxable gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

<u>Biodiesel Distribution %</u>	<u>B-11 or Higher Tax</u>	<u>Other Than B-11 or Higher Tax</u>
<u>00/50</u>	<u>29.5</u>	<u>32.5</u>
<u>50+/55</u>	<u>29.8</u>	<u>32.5</u>
<u>55+/60</u>	<u>30.1</u>	<u>32.5</u>
<u>60+/65</u>	<u>30.4</u>	<u>32.5</u>
<u>65+/70</u>	<u>30.7</u>	<u>32.5</u>
<u>70+/75</u>	<u>31.0</u>	<u>32.5</u>
<u>75+/80</u>	<u>31.3</u>	<u>32.5</u>
<u>80+/85</u>	<u>31.6</u>	<u>32.5</u>
<u>85+/90</u>	<u>31.9</u>	<u>32.5</u>
<u>90+/95</u>	<u>32.2</u>	<u>32.5</u>
<u>95+/100</u>	<u>32.5</u>	<u>32.5</u>

(2) The determination period for the biodiesel distribution percentage is January through December each calendar year. Prior to July 1, 2015, Iowa licensees did not separately report the total taxable gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state. Accordingly, the

## REVENUE DEPARTMENT[701](cont'd)

department cannot calculate the biodiesel distribution percentage for calendar years 2014 and 2015 using the method described in subparagraph 68.2(2)“b”(1). However, the best information available to the department indicates the biodiesel distribution percentage is not greater than 50 percent for calendar years 2014 and 2015. Therefore, for the period between July 1, 2015, and June 30, 2016, and for the period between July 1, 2016, and June 30, 2017, the rates for the excise tax on special fuel for diesel engines of motor vehicles are based on a biodiesel distribution percentage of 00/50%.

(3) Except as otherwise provided in this paragraph, for the period between March 1, 2015, and June 30, 2015, and for the period after June 30, 2020, an excise tax of 32.5 cents is imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state.

c. *Legislative review.* The ethanol distribution percentage, the biodiesel distribution percentage, and the corresponding excise tax rates are subject to legislative review at least every six years. The review is based upon a fuel distribution percentage formula status report, which contains the recommendations of a legislative interim committee appointed to conduct a review of the fuel distribution percentage formulas. The report is prepared with the assistance of the Iowa department of revenue and the Iowa department of transportation. The report includes recommendations for changes or revisions to the fuel distribution percentage formulas based upon advances in technology, fuel use trends, and fuel price fluctuations observed during the preceding six-year interval; an analysis of the operation of the fuel distribution percentage formulas during the preceding six-year interval; and a summary of issues that have arisen since the previous review and potential approaches for resolution of those issues. The first report will be submitted to the general assembly no later than January 1, 2020, with subsequent reports developed and submitted by January 1 at least every sixth year thereafter.

ITEM 6. Amend subrule 68.2(4), introductory paragraph, as follows:

**68.2(4)** The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or 1A 2. If the difference is less than \$25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is \$25,000 or more, the tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or 1A 2.

ITEM 7. Amend rule 701—68.4(452A) as follows:

**701—68.4(452A) Ethanol blended gasoline Blended fuel taxation—nonterminal location.**

**68.4(1) Responsibilities of all blenders at nonterminal locations.** A person who blends ethanol blended gasoline or biodiesel blended fuel at a nonterminal location must obtain a blender’s license. Blending ethanol with gasoline, or blending biodiesel with petrodiesel, may result in additional tax due or an allowable refund depending on the alcohol content of the mixture and the tax paid on its components. The blender must make payment to the department for the additional tax due. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE 1. A blender blends three parts ethanol with 17 parts gasoline to create E-15. The E-15 is taxed as ethanol blended gasoline, and the blender may be due a refund for excess tax paid on the gasoline used.

EXAMPLE 2. A blender blends one part biodiesel with four parts petrodiesel to create B-20. The B-20 is taxed as B-11 or higher, and the blender may be due a refund for excess tax paid on the petrodiesel used.

EXAMPLE 3. A blender blends one part biodiesel with 19 parts petrodiesel to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the biodiesel used.

EXAMPLE 4. A blender blends one part B-20 with five parts B-2 to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the B-20 used.

## REVENUE DEPARTMENT[701](cont'd)

**68.4(2) Blenders of ethanol blended gasoline.**

**68.4(1) a.** ~~Blenders~~ A blender who ~~own~~ owns the alcohol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier (~~20¢ per gallon~~). The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of ~~this subrule and subrules 68.4(2) and 68.4(3)~~ the following example, the tax rate for gasoline is presumed to be ~~20¢~~ 30¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be ~~19¢~~ 29¢ per gallon. The actual tax ~~rate~~ rates for the appropriate period is are shown in subrule 68.2(1).

## EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ( $7,200 \times .20$ <u>.30</u> ) =	\$1,440.00	<u>\$2,160.00</u>
Blender adds 800 gallons untaxed alcohol		\$ .00
Total tax paid on products	\$1,440.00	<u>\$2,160.00</u>
Total tax due on 8,000 gallons <u>ethanol</u> blended <del>product</del> gasoline ( $8,000 \times .19$ <u>.29</u> ) =	\$1,520.00	<u>\$2,320.00</u>
Additional Amount Due	\$ 80.00	<u>\$160.00</u>

**68.4(2) b.** ~~Blenders~~ A blender who ~~purchase~~ purchases alcohol and gasoline from a supplier must pay tax ~~of \$ .19 per gallon~~ on both the alcohol purchased and ~~\$ .20 per gallon on~~ the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be 29¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

## EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ( $7,200 \times .20$ <u>.30</u> ) =	\$1,440.00	<u>\$2,160.00</u>
Blender purchases 800 gallons tax-paid alcohol ( $800 \times .19$ <u>.29</u> ) =	152.00	<u>\$232.00</u>
Total tax paid on products	\$1,592.00	<u>\$2,392.00</u>
Total tax due on 8,000 gallons <u>ethanol</u> blended <del>product</del> gasoline ( $8,000 \times .19$ <u>.29</u> ) =	\$1,520.00	<u>\$2,320.00</u>
Amount of Refund Allowable		<u>\$72.00</u>

**68.4(3) c.** Ethanol blended gasoline—blending errors. ~~For periods beginning July 1, 1978, to June 30, 2000.~~

Where a blending ~~errors occur~~ error occurs and an insufficient amount of alcohol has been blended with ~~motor fuel~~ gasoline so that the mixture fails to qualify as ethanol blended gasoline as defined in Iowa Code section ~~452A.2(6)~~ 452A.2, a 1 percent tolerance applies in determining the tax ~~shall be determined on the blended product as follows described in this paragraph:~~

~~a. (1)~~ (1) If the amount of the alcohol ~~erroneously~~ blended with ~~motor fuel~~ gasoline is ~~short by five gallons or less per blend~~ at least 9 percent of the total blended product by volume, the alcohol and ~~motor fuel~~ gasoline blended product is ~~to be~~ considered ethanol blended gasoline and there ~~will be~~ is no penalty or assessment of additional tax.

~~b. (2)~~ (2) If the alcohol and ~~motor fuel~~ mixture is short of alcohol by more than five gallons but the alcohol blended with the ~~motor fuels~~ is short by 1.01 percent or less of such mixture, the ~~motor fuel~~ must be divided for tax purposes into ethanol blended gasoline and ~~motor fuel~~ containing no alcohol as follows:

~~That portion of alcohol must be added to motor fuel on the basis of one part alcohol to nine parts motor fuel to determine the portion which is considered ethanol blended gasoline and have a tax status as such. The portions of motor fuel remaining are to be considered taxable motor fuel subject to tax at the prevailing rate.~~

REVENUE DEPARTMENT[701](cont'd)

~~e-~~ If the amount of alcohol erroneously blended with motor fuel gasoline is short by more than 1.01 percent of the total blend less than 9 percent of the total blended product by volume, the total blend of motor fuel gasoline and alcohol is subject to tax as motor fuel gasoline at the prevailing rate of tax.

(3) This paragraph applies only if a blender intends to produce ethanol blended gasoline. If a blender does not intend to produce ethanol blended gasoline when blending alcohol and gasoline, and the mixture contains less than 10 percent alcohol by volume, no error has occurred and the mixture is subject to tax as gasoline.

(4) The following ~~formula will be~~ formulas are used to compute blending errors:

~~Actual gasoline + actual alcohol = total gallons of blended product~~

~~Total gallons of blended product × .09 = required alcohol~~

~~Motor fuel ÷ 9 = required alcohol~~

~~Misblended ethanol blended gasoline × .0101 = gallons of alcohol tolerance~~

~~Required alcohol — actual alcohol is less than or equal to gallons of alcohol short~~

~~Actual alcohol × 9 = motor fuel portion of ethanol blended gasoline~~

~~Motor fuel portion of ethanol blended gasoline + actual alcohol = ethanol blended gasoline~~

~~Actual motor fuel — motor fuel portion of ethanol blended gasoline = motor fuel~~

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend ethanol blended gasoline. Figures are rounded to the nearest whole gallons ~~gallon~~; ethanol blended gasoline is taxed at ~~\$.19~~ \$.29 per gallon; motor fuel gasoline is taxed at ~~\$.20~~ \$.30 per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1:

<del>Motor fuel</del> <u>Actual gasoline</u>	=	8,000 gal.
<del>Alcohol</del> <u>Actual alcohol</u>	=	800 gal.
<u>Total blended product</u>	=	8,800 gal.
<del>8,000 ÷ 9</del>	=	889 gal. <del>required alcohol</del>
<del>8,800 × .0101</del> <u>.09</u>	=	89 <u>792</u> gal. <del>required alcohol tolerance</del>
<del>889 — 800</del>	=	89 gal. <del>short of alcohol</del>

~~89 is equal to 89~~ The actual alcohol (800 gallons) is more than the required alcohol (792 gallons), which means that the tax is applied according to ~~paragraph "b" above~~ subparagraph 68.4(2) "c"(1) as follows:

<u>8,800 gal. of blended product ×</u> <u>\$.29</u>	=	<u>\$2,552</u> <u>tax on ethanol blended gasoline</u>
<del>800 × 9</del>	=	<del>7,200 gal. motor fuel portion of ethanol blended gasoline</del>
<del>7,200 + 800</del>	=	<del>8,000 gal. of ethanol blended gasoline</del>
<del>8,000 — 7,200</del>	=	<del>800 gal. of motor fuel subject to tax</del>
<del>8,000 gal. of alcohol × \$.19</del>	=	<del>\$1520 tax on ethanol blended gasoline</del>
<del>800 gal. of motor fuel × \$.20</del>	=	<del>\$ 160</del>
<u>TOTAL</u>		<u>\$1680 (\$1520 + \$160)</u>

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 2:

<del>Motor fuel</del> <u>Actual gasoline</u>	=	<del>8,000</del> <u>8,010</u> gal.
<del>Alcohol</del> <u>Actual alcohol</u>	=	<del>795</del> <u>790</u> gal.
<u>Total blended product</u>	=	<u>8,800</u> gal.
<del>8,000</del> $\div 9$	=	<del>889</del> gal. required alcohol
<del>8,795</del> $\frac{8,800 \times .0104}{.09}$	=	<del>89</del> <u>792</u> gal. required alcohol tolerance
<del>889</del> $- 795$	=	<del>94</del> gal. short of alcohol

~~94 is greater~~ The actual alcohol (790 gallons) is less than ~~89~~ the required alcohol (792 gallons), which means that the entire blend is considered ~~motor fuel~~ gasoline and the tax is applied according to ~~paragraph "c"~~ subparagraph 68.4(2) "c"(2) as follows:

$$\frac{8,795}{8,800 \text{ gal. of blended product}} \times \frac{\$2.20}{\$30} = \$1759.00 \text{ } \frac{\$2,640}{\text{tax on gasoline}}$$

EXAMPLE 3:

Motor fuel	=	8,000 gal.
Alcohol	=	885 gal.
$8,000 \div 9$	=	889 gal. required alcohol
$889 \text{ gal.} - 885 \text{ gal.}$	=	4 gal. short of alcohol

This total blend is considered ethanol blended gasoline because the blend is short by less than 5 gallons. The tax would be as follows:

$$8,885 \text{ gal.} \times \$19 = \$1688.15$$

**68.4(3) Blenders of biodiesel blended fuel.**

a. A blender who owns the biodiesel (supplier) being used to blend with diesel must purchase the diesel from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ per gallon and the tax rate for diesel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

<u>Blender purchases 7,120 gallons tax-paid petrodiesel (7,120 × .325) =</u>	<u>\$2,314.00</u>
<u>Blender adds 880 gallons untaxed biodiesel =</u>	<u>\$0.00</u>
<u>Total tax paid on products =</u>	<u>\$2,314.00</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

<u>Total tax due on 8,000 gallons blended B-11 or higher (8,000 × .29) =</u>	<u>\$2,320.00</u>
<u>Additional Amount Due =</u>	<u>\$6.00</u>

## REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 2.

<u>Blender purchases 7,600 gallons tax-paid petrodiesel (7,600 × .325) =</u>	<u>\$2,470.00</u>
<u>Blender adds 400 gallons untaxed biodiesel =</u>	<u>\$ .00</u>
<u>Total tax paid on products =</u>	<u>\$2,470.00</u>

The blended product is 8,000 gallons of diesel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

<u>Total tax due on 8,000 gallons diesel other than B-11 or higher (8,000 × .325) =</u>	<u>\$2,600.00</u>
<u>Additional Amount Due =</u>	<u>\$130.00</u>

EXAMPLE 3.

<u>Blender purchases 7,750 gallons tax-paid B-2 (7,750 × .325) =</u>	<u>\$2,518.75</u>
<u>Blender adds 250 gallons untaxed biodiesel =</u>	<u>\$ .00</u>
<u>Total tax paid on products =</u>	<u>\$2,518.75</u>

7,750 gallons of B-2 contains 155 gallons (2%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 405 gallons (155 + 250, or 5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

<u>Total tax due on 8,000 gallons diesel other than B-11 or higher (8,000 × .325) =</u>	<u>\$2,600.00</u>
<u>Additional Amount Due =</u>	<u>\$81.25</u>

*b.* A blender who purchases diesel products from a supplier must pay the appropriate tax on all diesel products purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for any additional amount due. The blender must also obtain a refund permit to receive a refund of any overpayment of tax on the blended product. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ per gallon and the tax rate for diesel fuel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

<u>Blender purchases 7,120 gallons tax-paid petrodiesel (7,120 × .325) =</u>	<u>\$2,314.00</u>
<u>Blender purchases 880 gallons tax-paid biodiesel (880 × .29) =</u>	<u>\$255.20</u>
<u>Total tax paid on products =</u>	<u>\$2,569.20</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

<u>Total tax due on 8,000 gallons blended B-11 or higher (8,000 × .29) =</u>	<u>\$2,320.00</u>
<u>Amount of Refund Allowable =</u>	<u>\$249.20</u>

EXAMPLE 2.

<u>Blender purchases 7,600 gallons tax-paid petrodiesel (7,600 × .325) =</u>	<u>\$2,470.00</u>
<u>Blender purchases 400 gallons tax-paid biodiesel (400 × .29) =</u>	<u>\$116.00</u>
<u>Total tax paid on products =</u>	<u>\$2,586.00</u>

## REVENUE DEPARTMENT[701](cont'd)

The blended product is 8,000 gallons of biodiesel blended fuel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons blended B-5 ( $8,000 \times .325$ ) =	<u>\$2,600.00</u>
Additional Amount Due =	<u>\$14.00</u>

EXAMPLE 3.

Blender purchases 4,000 gallons tax-paid B-2 ( $4,000 \times .325$ ) =	<u>\$1,300.00</u>
Blender purchases 4,000 gallons tax-paid B-20 ( $4,000 \times .29$ ) =	<u>\$1,160.00</u>
Total tax paid on products =	<u>\$2,460.00</u>

4,000 gallons of B-2 contains 80 gallons (2%) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 880 gallons (80 + 800, or 11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons B-11 or higher ( $8,000 \times .29$ ) =	<u>\$2,320.00</u>
Amount of Refund Allowable =	<u>\$140.00</u>

c. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has been blended with petrodiesel so that the mixture fails to qualify as B-11 or higher as defined in rule 701—67.1(452A), a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the biodiesel erroneously blended with petrodiesel is at least 10 percent of the total blended product by volume, the biodiesel and petrodiesel blended product is considered B-11 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of biodiesel blended with petrodiesel is less than 10 percent of the total blended product by volume, the entire mixture is considered taxable diesel other than B-11 or higher and subject to tax at the prevailing rate.

(3) This paragraph applies only if a blender intends to produce B-11 or higher. If a blender does not intend to produce B-11 or higher when blending biodiesel and petrodiesel, and the mixture contains less than 11 percent biodiesel by volume, no error has occurred and the mixture is subject to tax as diesel other than B-11 or higher.

(4) The following formulas are used to compute blending errors:

Actual biodiesel + actual petrodiesel = total gallons of blended product

Total gallons of blended product  $\times$  .1 = required biodiesel

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend B-11 or higher. Figures are rounded to the nearest whole gallon; B-11 or higher is taxed at \$.29 per gallon; diesel other than B-11 or higher is taxed at \$.325 per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

Actual petrodiesel	=	8,095 gal.
Actual biodiesel	=	905 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (905 gallons) is more than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

## REVENUE DEPARTMENT[701](cont'd)

$$\begin{array}{rcl} \underline{9,000 \text{ gal. of blended product}} & \equiv & \underline{\$2,610 \text{ tax on B-11 or higher}} \\ \times \underline{\$.29} & & \end{array}$$

EXAMPLE 2.

$$\begin{array}{rcl} \underline{\text{Actual petrodiesel}} & \equiv & \underline{8,105 \text{ gal.}} \\ \underline{\text{Actual biodiesel}} & \equiv & \underline{895 \text{ gal.}} \\ \underline{\text{Total blended product}} & \equiv & \underline{9,000 \text{ gal.}} \\ \underline{9,000 \times .1} & \equiv & \underline{900 \text{ gal. required biodiesel}} \end{array}$$

The actual biodiesel (895 gallons) is less than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(2) as follows:

$$\begin{array}{rcl} \underline{9,000 \text{ gal. of blended product}} & \equiv & \underline{\$2,925 \text{ tax on diesel other than B-11 or higher}} \\ \times \underline{\$.325} & & \end{array}$$

EXAMPLE 3.

A blender erroneously mixes 5,000 gallons of B-2 with 4,500 gallons of B-20 with the intent of creating B-11 or higher. 5,000 gallons of B-2 contains 100 gallons (2%) of biodiesel. 4,500 gallons of B-20 contains 900 gallons (20%) of biodiesel. Thus, the 9,500 gallons (4,500 + 5,000) of blended product includes 1,000 gallons (100 + 900) of biodiesel and 8,500 gallons (9,500 – 1,000) of petrodiesel.

$$\begin{array}{rcl} \underline{\text{Actual petrodiesel}} & \equiv & \underline{8,500 \text{ gal.}} \\ \underline{\text{Actual biodiesel}} & \equiv & \underline{1,000 \text{ gal.}} \\ \underline{\text{Total blended product}} & \equiv & \underline{9,500 \text{ gal.}} \\ \underline{9,500 \times .1} & \equiv & \underline{950 \text{ gal. required biodiesel}} \end{array}$$

The actual biodiesel (1,000 gallons) is greater than the required biodiesel (950 gallons), which means that the entire blend is considered B-11 or higher and the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

$$\begin{array}{rcl} \underline{9,500 \text{ gal. of blended product}} & \equiv & \underline{\$2,755 \text{ tax on B-11 or higher}} \\ \times \underline{\$.29} & & \end{array}$$

This rule is intended to implement Iowa Code section 452A.8 as amended by ~~1995 Iowa Acts, chapter 155~~ 2015 Iowa Acts, Senate File 257.

ITEM 8. Amend rule 701—68.13(452A) as follows:

**701—68.13(452A) Reduction of refund—sales and use tax.** Under Iowa Code section ~~422.45(11)~~ ~~423.3(56)~~, the ~~gross receipts sales price~~ sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid, and no refund has been or will be allowed, ~~are is~~ is exempt from Iowa sales and use tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section ~~422.42(3) or 422.45~~ ~~423.3~~ (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales and use tax. See sales tax rule 701—18.37(422,423). The ~~sale base~~ sales price upon which the sales and use tax will be applied shall include all federal excise

REVENUE DEPARTMENT[701](cont'd)

taxes, but will not include the Iowa motor vehicle fuel tax. *W. M. Gurley v. Army Rhoden*, 421 U.S. 200, 44 L.Ed. 110, 95 S.Ct. 1605 (1975).

This rule is intended to implement Iowa Code section 452A.17 as amended by 1995 Iowa Acts, chapter 155.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.

**ARC 2244C**

## **UTILITIES DIVISION[199]**

### **Adopted and Filed**

Pursuant to Iowa Code sections 17A.4 and 476.1 and Iowa Code chapter 476C as amended by 2015 Iowa Acts, House File 645, the Utilities Board (Board) gives notice that on October 26, 2015, the Board issued an order in Docket No. RMU-2015-0001, In re: Renewable Energy Tax Credits, "Order Adopting Rules." The adopted amendments to 199 IAC 15.19 reflect legislative changes to Iowa Code chapter 476C contained in 2015 Iowa Acts, House File 645, signed by the Governor on June 26, 2015.

The legislation amended Iowa Code chapter 476C to expand the list of options for chapter 476C facility ownership to include a municipally owned city utility and a rate-regulated public utility. The adopted rules reflect this amendment.

2015 Iowa Acts, House File 645, made two other changes to Iowa Code chapter 476C. First, the legislation increased the total eligible capacity for nonwind facilities from 53 megawatts (MW) to 63 MW, reserving this 10 MW increase for solar facilities with a generating capacity of 1.5 MW or less that are owned or contracted for by an electric cooperative association, a municipally owned city utility, or a public utility subject to rate regulation. Second, the legislation changed the maximum eligibility for refuse conversion facilities to annual maximums or limits. These two legislative changes do not require changes to the Board's rules.

Notice of Intended Action in Docket No. RMU-2015-0001 was published in IAB Vol. XXXVIII, No. 5 (9/2/2015), p. 371, as **ARC 2116C**. Written comments were filed by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and the Iowa Association of Electric Cooperatives (IAEC). Neither commenter requested an oral presentation. OCA said it supported the proposed amendments and that the amendments were consistent with 2015 Iowa Acts, House File 645. IAEC said it had no suggested revisions to the proposed amendments because they were consistent with statutory changes.

IAEC noted that the legislation increased the eligible capacity for nonwind facilities by 10 MW and reserved this increased capacity to solar facilities with a generating capacity of 1.5 MW or less that are owned or contracted for by electric cooperative associations, municipally owned city utilities, or public utilities subject to rate regulation. IAEC said that, while these changes do not require a rule change, clarification on how the legislation will be implemented would be helpful. For example, IAEC asked if the ownership limit in Iowa Code section 476C.3(7) applies equally to those eligible facilities that "contract for" such facilities.

IAEC's request for clarification is beyond the scope of this rule making. The Board believes that any such clarification is best done on a case-by-case basis when an actual project is before the Board with relevant facts known. This gives those with differing statutory interpretations an opportunity to comment. A request for declaratory ruling might also be an appropriate docket for IAEC's request, as that process also allows for comment by those with differing views.

No additional notice is necessary prior to the adoption of these amendments, and the Board adopts the amendments as published under Notice of Intended Action.

The Board does not find it necessary to adopt a separate waiver provision in this rule making. While the Board has a general waiver provision in 199 IAC 1.3, the amendments in 2015 Iowa Acts, House

## UTILITIES DIVISION[199](cont'd)

File 645, did not give the Board the authority to waive the statutory deadlines, so no waiver provision for these rules is necessary.

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

These amendments are intended to implement Iowa Code section 476.1 and Iowa Code chapter 476C as amended by 2015 Iowa Acts, House File 645.

These amendments will become effective December 30, 2015.

The following amendments are adopted.

ITEM 1. Amend subparagraph **15.19(1)“b”(7)** as follows:

(7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa or has one or more members organized pursuant to Iowa Code chapter 499, a municipally owned city utility as defined in Iowa Code section 362.2, or a public utility subject to rate regulation pursuant to Iowa Code chapter 476;

ITEM 2. Amend subparagraph **15.19(1)“b”(8)** as follows:

(8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter ~~490A~~ 489 whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 9H; or

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.